

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, PETITIONER,

vs.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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**IN UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON, NORTH-
ERN DIVISION**

No. 3949

HENRY RAGINTON RABANG, Petitioner,

vs.

JOHN P. BOYD, District Director, Immigration & Naturaliza-
tion Service, Respondent

**PETITION FOR WRIT OF HABEAS CORPUS AND SHOW CAUSE, AND
DECLARATORY JUDGMENT**

Petitioner respectfully shows the Court, and alleges as
follows:

Cause I

1

The jurisdiction of this Court arises under Title 28,
United States Code, Section 2241, and Title 5, United States
Code, Section 1009, and Title 28, United States Code, Sec-
tions 2201 and 2202.

2

This is an action where petitioner is now in the custody
of respondent and restrained of his liberties under color of
the authority of the United States, or will be, not later
than 4:00 P. M. Wednesday, May 25, 1955, the date of filing
this petition; and this is a proceeding wherein petitioner
is threatened with immediate deportation from the United
[fol. 5] States as an alleged alien unlawfully in the United
States, and wherein an actual controversy exists between
petitioner and respondent, John P. Boyd, concerning the
authority of said respondent to continue petitioner in cus-
tody and to deport him; and wherein injunctive relief, or
order to show cause, that will prevent irreparable injury
or harm to petitioner, and to effectuate the review of pro-
ceedings to date, and the legality of such imprisonment
and imminent deportation.

That respondent, John P. Boyd is the District Director of Immigration and Naturalization, and he has been duly appointed and is now acting in said office, and resides in, and has his principle place of business in Seattle, Washington within the jurisdiction of the above-entitled court.

That petitioner is a permanent resident of Seattle, King County, Washington, and has resided continuously in the United States of America since January 24, 1930; petitioner was born in the Philippine Islands, and came to the United States as a National of the United States at which time he declared his intention of being a permanent resident of the United States, and petitioner has, at all times herein mentioned, intended to become a United States citizen.

[fol. 6]

That on or about March 21, 1951 petitioner was arrested pursuant to a warrant of arrest issued by the Acting District Director of the United States Immigration and Naturalization Service, Seattle, Washington, said warrant of arrest charging that petitioner was an alien found to be in the United States in violation of the Immigration and Naturalization laws, and was subject to deportation on the ground that petitioner, a person born in the Philippine Islands, had, on or after June 28, 1940 been convicted of a violation of law relating to narcotics.

That in truth and in fact petitioner was convicted upon his plea of guilty of the offense of violation of Section 2554A, Title 26, U. S. Code, but petitioner, however, was not imprisoned pursuant to said judgment of conviction, and a sentence of six (6) months was suspended, and the defendant was placed upon probation as provided by law for a period of three (3) years, commencing from the 12th day of February 1951, said probation being conditioned upon petitioner's good behavior, and upon regular reports to the United States Probation Officer as directed. That

petitioner followed and abided by all such terms and conditions, and, at the end of said three year period he was duly and regularly discharged from said probation and [fol. 7] sentence.

7

That thereafter petitioner exhausted his administrative remedies, including an appeal to the Board of Immigration appeals, and thereafter sought judicial review of said order of deportation, and following an adverse decision by the above-entitled court petitioner ~~appealed to the Court of Appeals, Ninth Circuit;~~ that said appeal was dismissed because petitioner was without funds, and because it was believed by petitioner, and by the Immigration and Naturalization Service, locally, that petitioner's case would be determined by the appeals in the cases of Mangaoang v. Boyd, Gonzales v. Boyd, Alcantra v. Boyd, and Peraulta v. Boyd, said cases being cases involving the status of Filipinos residing in the United States and who came to the United States prior to the Philippine Independence Act of 1934.

8

That thereafter, the local office of the Immigration and Naturalization service moved to dismiss the order of deportation against petitioner based upon the decisions in said cases, but said Board of Immigration Appeals has refused to dismiss said order of deportation, and pursuant thereto, respondent Boyd has taken the above-described action to bring about the immediate deportation of petitioner.

[fol. 8]

9

That petitioner is not a person subject to deportation under any lawful and constitutional provision of law on the ground, and for the reason, that petitioner is not now an alien and has not been an alien during all the times herein mentioned, that the provision under which petitioner is sought to be deported has been amended or repealed, and petitioner has not been convicted, imprisoned or sentenced within the meaning of the Immigration laws, and said conviction, if any, was not a conviction "after entry" as required by the applicable immigration laws;

4
that a deportation of petitioner would deprive him of due process of law under the 5th Amendment to the United States Constitution.

Cause II

For a second cause of action herein for declaratory and injunctive relief petitioner alleges:

1

Petitioner re-alleges paragraphs 1-9 inclusive, of Cause I, as though set forth in full in this cause of action.

2

That petitioner has exhausted his remedies, and is threatened with immediate and irreparable harm unless prevented from so doing by an Order to Show Cause or appropriate injunctive relief; and respondent will forcibly deport petitioner from the United States, all contrary to [fol. 9] law, and without any grounds therefore existing:

3

That petitioner is entitled to a review of the administrative proceedings hereinbefore taken pursuant to the Administrative Procedures Act, and for injunctive relief, or alternatively for review under the courts jurisdiction for a writ of habeas corpus.

Wherefore, petitioner prays relief as follows:

That respondent, John P. Boyd be restrained from taking petitioner into his physical custody or detaining petitioner in any place of physical confinement, and from deporting petitioner pursuant to any proceedings hereinbefore taken.

2. That this court, order and direct that petitioner, pending the final determination of the merits of this petition continue to be enlarged under the order of supervisory parole heretofore established by respondent.

3. That this court declare that respondent, John P. Boyd has no jurisdiction over petitioner for purposes of deportation. That this court declare by way of declaratory judgment that petitioner is not an alien within the meaning

of the law, and is not subject to deportation pursuant to the outstanding warrant of deportation.

[fol. 10] 4. That petitioner be discharged from all custody of the respondent pursuant to said outstanding warrant of deportation.

5. That this court grant such other further or different relief as may be found to be just, proper and equitable in the premises.

(S.) C. T. Hatten, Attorney for Petitioner.

C. T. Hatten, 324 New World Life Bldg., Seattle 4, Washington.

Received 5/25/55, F. N. Cushman, Asst. U. S. Attorney.

[fol. 11] IN THE UNITED STATES DISTRICT COURT
ORDER TO SHOW CAUSE

This matter having come on before the undersigned United States District Judge, on the filing of the Petition of Petitioner for declaratory judgment, habeas corpus and injunctive relief, and the Court having considered said petition, and being advised in the premises, now, therefore,

It is ordered that respondent, or persons acting under his direction or in his stead, *by* and appear in the above-entitled court at the hours of 2:00 o'clock P. M. on the 20th day of June, 1955, then and there to show cause, if any there *by*, why the respondent should not be enjoined and restrained from deporting the petitioner, or in the alternative, from discharging petitioner on writ of habeas corpus, and in granting petitioner the affirmative relief which petitioner seeks in said petition.

It is further ordered that petitioner may be released from custody, and remain at liberty under the terms and conditions of the parole agreement outstanding on May 25, 1955.

(S.) William J. Lindberg, Judge.

[fol. 12] IN THE UNITED STATES DISTRICT COURT

RETURN TO ORDER TO SHOW CAUSE AND PETITION FOR WRIT
OF HABEAS CORPUS

John W. Keane states that he is an attorney in the service of the United States Department of Justice, Immigration and Naturalization Service; that in his official capacity he is authorized to make in behalf of John P. Boyd, District Director, and hereby does make, the following return to the order to show cause herein.

I

The petitioner on May 19, 1955, was directed to surrender to the respondent on Wednesday, May 25, 1955, for deportation pursuant to a valid order and warrant of deportation lawfully issued, in accordance with proceedings that were regular, fair, and in compliance with law, as appears from the records of the Department of Justice, Immigration and Naturalization Service, with respect to the petitioner, which records are hereby incorporated by reference to the same effect as though they had been fully set out herein and are attached hereto and marked Exhibit A.

II

The petitioner is a native and citizen of the Philippine Islands who has never naturalized or otherwise become a citizen of the United States. He last entered the United [fol. 13] States at Seattle, Washington, on January 24, 1930, at which time he was admitted for permanent residence. He has resided in the United States at all times since that entry.

III

On February 12, 1951, in the United States District Court at Seattle, Washington, he was convicted on his plea of guilty of selling and giving away narcotic drugs, in violation of 26 U. S. C. 2554(a). He was sentenced to confinement in the King County Jail for a period of six months on Count One of the indictment. The sentence was suspended and he was placed on probation for three years. All the foregoing is a matter of record in the office of the

Clerk of the United States District Court for the Western District of Washington, Northern Division; in Criminal Cause 48120, The United States of America vs. Henry Ragonton Rabang.

IV

Deportation proceedings were instituted against the petitioner February 27, 1951. He was accorded deportation hearing March 28, 1951, as a result of which the Hearing Officer recommended that he be deported from the United States pursuant to the act of February 18, 1931, as amended by Section 21, Title 2, Act of June 28, 1940, 8 U. S. C. 156(a), in that on or after June 28, 1940, he had [fol. 14] been convicted of the violation of a law relating to traffic in narcotics, to wit: sell and give away narcotic drugs in the form of morphine tartrate syrettes. On October 26, 1951, the Acting Assistant Commissioner, Adjudications Division, United States Immigration and Naturalization Service, adopted the findings and order of the Hearing Officer and ordered the petitioner deported. From this the petitioner appealed to the Board of Immigration Appeals, and on February 26, 1952, the Board of Immigration Appeals dismissed the appeal.

V

The action of the Immigration officials was reviewed by the United States District Court for the Western District of Washington, Northern Division, in Civil Cause 3481, which resulted in the dismissal of the petition for a writ of habeas corpus. On appeal to the Circuit Court of Appeals the Circuit Court on December 9, 1953, on motion of the Government, dismissed the appeal for a lack of prosecution.

On March 1, 1955, an application was made to the Board of Immigration Appeals for a reconsideration of its previous decision and order. The Board of Immigration Appeals on April 7, 1955, in a written decision, ordered that the motion for reconsideration be denied.

[fol. 15] The administrative deportation proceedings were all conducted and a warrant of deportation issued prior to the effective date of the Immigration and Nationality Act of 1952 which repealed the Act of February 18,

1931, as amended (Title 8 U. S. C. 156(a)) (Immigration and Nationality Act of 1952, Section 403(31)).

Nothing contained in the Immigration and Nationality Act of 1952, unless specifically provided for therein, affects the validity of a warrant of arrest, order, or warrant of deportation, or a proceeding which was valid on the effective date of the Act (Section 405(a), Immigration and Nationality Act of 1952, Note following Title 8 U. S. C. A. Section 1101).

Wherefore, it is prayed that petition for a writ of habeas corpus be denied and rule to show cause quashed.

(S.) John W. Keane, Attorney for the Respondent,
(S.) F. N. Cushman, Assistant United States Attorney.

[fol. 16] EXHIBIT "A" TO RETURN TO RULE TO SHOW CAUSE

Director's Certificate to following transcript omitted in printing.

[fol. 17] UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals

Apr 7 1955

File: A-5203748—Seattle

IN THE MATTER OF HERMOGENES RAGONTON RABANG OF HENRY
RAGONTON RABANG OF JIMMY RANDALL

In Deportation Proceedings

In Behalf of Respondent: C. T. Hatten, Esquire, New World Life Building, Second Avenue at Cherry, Seattle 4, Washington.

Deportable: Act of 1931—Convicted of narcotic violation.

The Acting Assistant Commissioner, in a decision dated October 26, 1951, ordered that the subject alien be deported from the United States, pursuant to law, on the above-stated charge. On February 6, 1952 this Board dismissed the appeal from that decision. Subsequently, on May 14,

1952, we ordered that oral argument be granted in the case. Thereafter, however, and on July 4, 1952, we ordered that a motion requesting further consideration be denied. The case is now before us on motion for reconsideration filed by the Acting Regional Commissioner for the Northwest Region, at St. Paul, Minnesota.

The subject male alien is a native and citizen of the Philippine Islands. He last entered the United States at [fol. 18] Seattle, Washington on January 24, 1930. He was then admitted for permanent residence. He has resided in the United States at all times since that entry. He is married to a United States citizen. On February 12, 1951, in the United States District Court at Seattle, Washington, he was convicted, on his plea of guilty, of selling and giving away narcotic drugs (morphine tartrate syringes) in violation of 26 U. S. C. 2554(a). The court imposed a jail sentence of six months which was suspended and the respondent was placed on probation for three years.

On the basis of the foregoing, the alien is clearly deportable on the stated charge. Because he was convicted of the narcotics violation on February 12, 1951, he is deportable even though he was not required to serve any term of imprisonment. Also, the court did not, at the time of imposing judgment and passing sentence or within 30 days thereafter, make a recommendation that the respondent be not deported.

The present motion contains the request that this Board reconsider the case with a view to termination of the proceedings, or for such other action as we deem appropriate. The basis for the motion is set forth as being the decision of the United States Supreme Court in the case of *Barber v. Gonzales* (74 S. Ct. 822). Also, the motion sets forth that the alien is not subject to any pending criminal proceedings under Section 242(e) of the Immigration and [fol. 19] Nationality Act.

We have reached a conclusion that the motion for reconsideration should be denied. The reason for this conclusion is the fact that the case of *Barber v. Gonzales* (supra) is not applicable here. That is, we find that the facts of this case do not bring it within the scope of the decision of the Supreme Court in the *Barber* case.

Gonzales, a native and citizen of the Philippine Islands, came to the continental United States in 1930, prior to the Philippine Independence Act of March 4, 1934. He was sentenced to imprisonment in 1941 and 1950 for crimes involving moral turpitude. The Government sought to deport him under that portion of Section 19(a) of the Immigration Act of 1917, as amended, which required deportation for such crimes if committed *after entry*. The Court held that said statute set up entry as an alien as an essential element to deportability, and that Gonzales was not deportable because he had not made an entry as an alien, as he was a national of the United States at the time of his only entry into this country.

In this case, the alien involved is a native and citizen of the Philippine Islands, and he also came to the United States in 1930 at a time when he was a national of the United States, as did Gonzales. Here, however, the alien has been ordered deported under the Act of February 18, 1931. That Act does not set up entry as an alien as an essential element to deportability. All it requires is that [fol. 20] the person sought to be deported be an alien and that he be, or have been, convicted for violation of any law regulating traffic in narcotics after the effective date of the enactment. On this record, the person sought to be deported was convicted 20 years after the enactment of the legislation under which he is sought to be deported, and he was an alien at the time of such conviction, having been an alien for all purposes since July 4, 1946.

On the basis of the foregoing, we find that the motion for reconsideration must be denied. We will now so order.

Order: It is ordered that the motion for reconsideration be and the same is hereby denied.

(S.) Thos. Finucane, Chairman.

[fol. 21] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Mar 1 1955

File: A5 203 748—Seattle.

In re: Hermogenes Ragonton Rabang or Henry Ragonton Rabang or Jimmy Randall.

In Deportation Proceedings.

In Behalf of Respondent: C. T. Hatten, Esquire, New World Life Building, Second Avenue at Cherry, Seattle 4, Washington.

Charges: >

Warrant: Act of 1931—Convicted of narcotic violation.

Lodged: None.

Application: None.

Detention Status: Released on \$500.00 bond.

Motion to the Board of Immigration Appeals

Discussion: The alien is a native and citizen of the Philippine Islands, aged 44 years, who last entered the United States at Seattle, Washington January 24, 1930, and was admitted for permanent residence. He was convicted in the United States District Court for the Western District of Washington, Northern Division, February 12, 1951, for violation of 26 U. S. C. 2554a, which relates to narcotics.

On October 26, 1951 the Assistant Commissioner, Adjudications Division, entered an order directing that the alien [fol. 22] be deported on the charge that on or after June 28, 1940 he has been convicted of the violation of a law relating to traffic in narcotics, to-wit, selling and giving away narcotic drugs, to-wit, Morphine Tartrate Syrettes. On February 6, 1952 the Board dismissed the alien's appeal from the Assistant Commissioner's decision.

In view of the decision of the United States Supreme Court in the case of *Barber vs. Gonzales*, 74 S. Ct. 822, it is deemed advisable that further consideration be given to this case by the Board with a view of terminating the proceedings or for such other action as it deems appropriate.

The alien is not subject to any pending criminal pro-

ceedings under Section 242(e) of the Immigration and Nationality Act.

Motion is hereby made that the Board of Immigration Appeals reopen and reconsider this case and enter such order as is deemed appropriate under the circumstances.

(S.) A. S. Remington, Acting Regional Commissioner, Northwest Region.

JMM gm.

[fol. 23] UNITED STATES DEPARTMENT OF JUSTICE

Board of Immigration Appeals

Feb 6 1952

File No. A-5203748

IN THE MATTER OF HERMOGENES RAGONTON RABANG OF HENRY
RAGONTON RABANG alias JIMMY RANDALL

In Deportation Proceedings

In Behalf of Respondent: C. T. Hatten, Esquire, Hatten and Lesser, New World Life Building, Second Avenue at Cherry, Seattle 4, Washington.

Upon consideration of the entire record, it is ordered that the appeal from the decision of the Commissioner be and the same is hereby dismissed.

(S.) Thos. S. Finucane, Chairman.

REL/erc.

Carded Feb 11 1952, enforcement records.

[fol. 24] Warrant—Deportation of Alien

No. A-5203748

To: Chief, Detention and Deportation Section, Immigration and Naturalization Service, Seattle, Washington

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized Hear-

ing Officer, and upon the basis thereof, an order has been duly made that the alien Hermogenes Ragonton Rabang who entered the United States at Seattle, Washington on the 24th day of January, 1930 is subject to deportation under the following provisions of the laws of the United States to wit: The Act of Feb. 18, 1931, as amended, in that, on or after June 28, 1940, he has been convicted of the violation of a law relating to traffic in narcotics, to wit: Sell and give away narcotic drugs, to wit: Morphine Tartrate Syrettes.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to deport the said alien ~~to~~ Philippine Islands in accordance with law (Sec. 20 of the Immigration Act of Feb. 5, 1917, as amended by the Internal Security Act of 1950—Public Law 831), at the expenses of the appropriation "General Expenses, Immigration and [fol. 25] Naturalization Service, 1951", including the expenses of an attendant if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 26th day of October, 1951.

(S.) John P. Boyd, District Director, Seattle District.

Form I-205, (Old W-4a), Immigration and Naturalization Service, (Rev. 10-31-47), 16-10891-1.

[fol. 26] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

(Appeal 15)

File: A-5203748—Seattle.

In re: Hermogenes Ragonton Rabang or Henry Ragon-ton-Rabang alias Jimmy Randall.

Oct 26 1951

In Deportation Proceedings.

In Behalf of Respondent: C. T. Hatten, Esquire, Hatten and Lesser, New World Life Building, Second Avenue at Cherry, Seattle 4, Washington.

Charges:

Warrant: Act of 1931—Convicted of narcotic violation.

Lodged: None.

Application: None.

Detention Status: Released on bond.

Discussion: This record relates to a 41-year-old married male, a native and citizen of the Republic of the Philippines, who last entered the United States at Seattle, Washington on January 24, 1930 when he was admitted for permanent residence. On February 12, 1951, in the United States District Court at Seattle, Washington, he was convicted, on his plea of guilty, of selling and giving away narcotic drugs (morphine tartrate syrettes) in violation of 26 U. S. C. 2554a. The Court imposed a jail sentence of six months which was suspended and placed the respondent [fol. 27] on probation for three years.

Counsel, in his brief, contends that the respondent is not now subject to deportation because, as he is on probation, the order entered by the Court is not the final passing of sentence, that if the respondent complies with the terms of probation he will never be imprisoned, and that when final order has been entered discharging him he will be completely discharged or the Court will have 30 days within which to make a recommendation as to deportation.

In view of the fact that the respondent was convicted of a narcotics violation on February 12, 1951, he is deportable even though not required to serve any term of imprison-

ment, and inasmuch as the Court did not, at the time of imposing judgment or passing sentence or within 30 days thereafter, make a recommendation to the Attorney General that the respondent shall not be deported, counsel's contentions are untenable. Notwithstanding the respondent's long residence in the United States and his being married to a United States citizen, in light of the nature and recentness of his conviction of violating a law relating to traffic in narcotics, no administrative discretionary relief is justified.

Upon consideration of the entire record, the recommended order of the officer conducting the hearing is hereby adopted.

Order: It is ordered that the alien be deported from the [fol. 28] United States, pursuant to law, on the charge stated in the warrant of arrest.

— — —, Assistant Commissioner, Adjudications
Division.

Carded Jan 3, 1952, Enforcement Records.

[fol. 29] TRANSMISSION OF RECORDS OF WARRANT HEARINGS
(omitted in printing)

[fol. 30] UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Seattle, Washington

File No. A-5203748

Hearing:

Date: March 28, 1951 (9:15 A. M.).

Place: Room 123, Immigration Station, Seattle.

Hearing Officer: David S. Caldwell.

Examining Officer: Clarence W. Johnson.

Stenographer: Beatrice O. Currie.

Language Used: English.

Interpreter: None.

Representative: J. Edmund Quigley, Dexter Horton Building, Seattle.

Respondent: Hermogenes Ragonton Rabang alias Henry Ragonton Rabang alias Jimmy Randall.

Hearing Officer to Examining Officer and Counsel:

Q. Are both the parties ready to proceed?

A. (By both) Yes.

Hearing Officer to Respondent:

Q. Do you speak and understand the English language?

A. Yes, sir.

Q. What is your full, true and correct name?

A. Well, my real name when I came to this country was

Hermogenes Ragonton Rabang.

Q. Are you now known as Henry Ragonton Rabang?

A. Yes, sir.

Q. And what is your permanent address?

A. Right now, 803 East Union Street, Seattle, but I have another address, 422 Maynard Avenue. I take some of my mail down there.

Q. Will you please stand up and be sworn. Raise your right hand. Do you solemnly swear that all the statements you are about to make in this proceeding will be the truth,

the whole truth, and nothing but the truth, so help you God?

A. I do.

[fol. 31] Hearing Officer to Examining Officer:

Q. What is the nature of this proceeding?

A. Expulsion proceedings against the respondent on charges set forth in the executed warrant of arrest, which I now hand you, pursuant to a notice of hearing, which I also now hand you.

Hearing Officer to Respondent:

Q. Have you ever used or been known by any other name or names, other than those you have mentioned?

A. Well, my alias, Jimmy Randall.

Q. Any other aliases that you have used?

A. That is all.

Q. When and for what reason did you use this alias?

A. Well, because, it was years ago and I just wanted because I have some trouble in Stockton and I started going by Jimmy, but my real name is the same though, you know.

Q. I now show you a Warrant of Arrest No. A-5203748, issued February 27, 1951, by the Acting District Director of the Seattle District of the Immigration & Naturalization Service at Seattle, Washington, for the arrest of one Henry Ragenton Rabang. This warrant is endorsed to show service upon that person at Seattle, Washington, on March 21, 1951. Were you served with a copy of this warrant of arrest as indicated herein?

A. Ya, I have, but I don't have it right now.

Q. You were served with a copy of it?

A. Yes.

Q. I also show you a Form Letter I-226, notifying you of the place and date of hearing in your case, which letter is endorsed to show personal service on March 28, 1951. Did you also receive a copy of this letter?

A. Yes.

Q. This warrant of arrest and Form Letter I-226 are entered of record, respectively, as Exhibits 1 and 2. Do you understand?

A. Yes, sir.

Q. This warrant charges that you appear to be deportable from the United States for the reason that on or after [fol. 32] June 28, 1940, you have been convicted of a violation of law relating to traffic in narcotics, to wit: selling and giving away narcotic drugs, namely, morphine tartrate syrettes. Do you fully understand the nature of this charge against you?

A. Yes, sir.

Q. At this hearing you may be represented by counsel of your own choice and at your own expense, which counsel may be an attorney at law or any person duly qualified to practice before this Service and the Board of Immigration Appeals. Do you desire to be so represented?

A. Yes, my attorney, Mr. Quigley.

Hearing Officer to Counsel:

Q. Will you please state your name, business address and phone number for the record?

A. J. Edmund Quigley, 955 Dexter Horton Building; telephone, Main 5313.

Q. Have you filed a notice of appearance in this case?

A. Yes, this morning.

By Examining Officer: Notice of appearance is in the record.

Hearing Officer to Counsel:

Q. Have you been retained by the respondent to represent him in this proceeding?

A. I have, yes.

Q. And have you been admitted to practice before this Service and the Board of Immigration Appeals?

A. I have an application pending.

Q. Are you ready at this time to proceed with the hearing in the case of the respondent?

A. Yes, I am.

Hearing Officer to Examining Officer:

You may proceed, Mr. Johnson.

Examining Officer to Respondent:

Q. What is your present address:

A. 803 East Union.

[fol. 33] Q. When and where were you born?

A. I was born in the Islands, in the Philippine Islands, on April 23, 1910.

Q. What city and province, please?

A. Santa Catalina, Ilocos Sur.

Q. Of what country are you now a citizen?

A. Well, I am an American because I was born under the American flag.

Q. Did you ever acquire United States citizenship?

A. Well, no, sir, because I know I am an American, you know.

Q. What do you mean, you are an American?

A. Well, I was born under the American flag and when I came to this country the Island was still under the United States Government. It was only five years ago that they have independence, you know.

Q. You claim you are an American because you were born in the Philippine Islands then?

A. Yes, sir.

Q. You never acquired United States citizenship through any other method that you know of?

A. No, sir.

Q. You consider yourself a citizen of the Philippine Islands then?

A. Well, I consider myself as an American because most of my life I live here.

Q. To your knowledge, did you ever obtain citizenship of any other country?

A. No, sir, I have never been out of this country.

Q. Did you ever apply for naturalization in this country?

A. No, sir.

Q. When and where did you enter the United States?

A. Well, I left the Islands January 4, 1930, and I arrived here in Seattle the 24th, and I stay overnight here and I took the "Alexander" to Frisco.

Q. You arrived in Seattle on January 24, 1930, then?

A. Yes, sir.

Q. On what ship did you arrive?
[fol. 34] A. "President Pierce".

Q. I now present for your inspection Form I-404, Certificate of Admission, which indicates that Hermogenes Rabang, a citizen of the Philippine Islands, was admitted to the United States at Seattle, Washington, on January 24, 1930, on the SS "President Pierce", and that he was admitted for the purpose of residing for permanent residence. Would you please indicate whether or not the Hermogenes Rabang, shown in this Certificate of Admission, is you?

(Respondent and attorney examine certificate).

A. Yes, sir.

Examining Officer to Hearing Officer:

Q. I offer Form I-404 in evidence?

A. Form I-404, dated February 13, 1951, in the name of Hermogenes Rabang, will be received in evidence as Exhibit No. 3.

Hearing Officer to Respondent and Counsel:

Q. Do you have any objection to its introduction into the record?

A. (By Counsel) No.

Examining Officer to Respondent:

Q. Have you been absent from the United States since the date of your entry on January 24, 1930, Mr. Rabang?

A. Well, the only time I left the United States, but I don't think it is considered, I left the United States when I came to Alaska, because Alaska is territory of United States, so I never left the United States, sir.

Q. Have you been to Alaska on several occasions?

A. Every summer except—

Q. Did you ever stop at Canada on your trip to Alaska or your return from Alaska?

A. No, sir.

Q. You haven't been absent to any foreign country since January 24, 1930?

A. No, sir.

Q. Have you ever been arrested and deported from the United States?

[fol. 35] A. No, sir.

Q. Have you ever been arrested?

A. Yes, sir.

Q. When and where were you first arrested.

A. Well, I was first in California.

Q. When and where in California?

A. I think my first one was in Stockton, California.

Q. When?

A. That was 1938. I am not quite sure because when the officers brought me here they said they were looking for the record.

Q. What was the charge?

A. Disorderly conduct.

Q. What was the disposition of this case?

A. They sent me out of town. They give me a floater.

Q. Was there any fine or sentence to imprisonment?

A. No, sir.

Q. When and where were you next arrested?

A. Well, next is Sacramento.

Q. When?

A. I think it was 1939, I think.

Q. What was the charge?

A. Well, suspicion of armed robbery.

Q. What was the disposition of this case?

A. They found out I didn't have anything to do with it, so they just put me out of town.

Q. Was there any fine or sentence in this case?

A. No, sir.

Q. When and where were you next arrested?

A. After that I went to Los Angeles and I was picked up again down there for suspicion of murder.

Q. When?

A. I am not quite sure about the date but I think it was in 1944, I think, or something, I am not quite sure about the date.

[fol. 36] Q. What was the disposition of this case?

A. Well, they finally found the murderer, so they turned me loose. Just kept me down for a couple of nights, I think.

Q. When and where were you next arrested?

A. It was in the State of Washington, in Seattle.

Q. When? Approximately when?

A. Oh, it must be around 1946, something like that. I am not quite sure, it has been a long time.

Q. What was the charge?

A. Disorderly.

Q. Disorderly conduct?

A. Yes, sir.

Q. What was the disposition of this case?

A. Well, they just, I didn't have no—I think the case was dismissed, you know.

Q. Was there any fine or sentence to imprisonment?

A. No, sir.

Q. When and where were you next arrested?

A. Right here in the same town. Right here in Seattle.

Q. When?

A. It was 1948—excuse me, I think '49, something like that, '49.

Q. What was the charge?

A. Well, those cops in this town just pick me up and turn me loose. They wanted to ask me questions, this and that, and I told them I don't know anything about their business or this and that, you know.

Q. Were you fined or sentenced to any term of imprisonment?

A. No, they just turn me loose.

Q. When and where were you next arrested?

A. They just pick me up.

Q. When? Approximately?

A. A couple months after the first one.

Q. What was the charge?

A. Same thing, they pick me up, stay overnight, and let me loose. I say I don't know nothing about it.

[fol. 37] Q. When and where was the next time you were arrested?

A. The third time they pick me up again and they give me a State vagrancy.

Q. What was the disposition of that case?

A. Well, it went up to the court and when we went to the court, the case was dismissed.

Q. When was that charge placed against you?

A. I think it was 1949.

Q. When and where were you next arrested?

A. Well, the next one, I was arrested in 19—I think it

was 1950, I am not quite sure about the date, but I was arrested around 1950, I think, but I am not quite sure about the date, you know.

Q. What were you charged with?

A. Well, I was charged with, I don't even remember what I was charged with then, but I know I had a fine of \$100.00.

Q. Any sentence to imprisonment?

A. No, sir.

Q. You don't remember the charge?

A. I can't remember. All I know is we went up to a certain place and we were all—the place was raided and I was one of the boys down there and there were lots of boys, you know.

Q. Was this a gambling house in which you were raided?

A. No, it is a private house.

Hearing Officer to Respondent:

Q. Was that in Seattle?

A. Yes, sir.

Examining Officer to Respondent:

Q. When and where were you next arrested?

A. Well, the next one is this one when I was arrested on this narcotic charge.

Q. Where was that?

A. Right here in town.

Q. And when?

A. I think it was last March.

[fol. 38] Hearing Officer to Respondent:

Q. March of 1950?

A. Yes, sir.

Examining Officer to Respondent:

Q. I now show you a certified copy of indictment, Judgment, Sentence and Order of Probation in the United States District Court, Seattle, Washington, which indicates that one Henry Ragonton Rabang was indicted for unlawfully selling and giving away a quantity of narcotic drugs, to wit: five Morphine Tartrate Syrettes, and that he was convicted upon his plea of guilty of the aforementioned

charge on February 12, 1951. Does the Henry Ragonton Rabang referred to in this record relate to you?

(Respondent and counsel examine documents).

A. Yes, sir.

Examining Officer to Hearing Officer:

Q. I offer the afore-mentioned certified copies in evidence?

A. Certified copy of Indictment No. 48120, issued in the United States District Court, Western District of Washington, Northern Division, together with a Judgment, Sentence and Order of Probation of this same number, dated February 12, 1951, will be received in evidence as Exhibit No. 4.

Hearing Officer to Respondent and Counsel:

Q. Do you have any objection to its introduction?

A. (By counsel) No.

Examining Officer to Respondent:

Q. Have you ever been arrested at any other times other than those you have just related?

A. No, sir.

Q. Do you have any close relatives in the United States?

A. Well, I have a brother.

Q. Where is he residing?

A. Well, he used to live in Stockton, but I don't know where he lives right now.

Q. Are you married?

A. Yes, sir.

[fol. 39] Q. What is your wife's name?

A. Carmel Verano.

Q. When and where were you married?

A. I was married last summer in here, in town.

Q. What is the date of your marriage?

A. June 15, 1950.

Q. Of what country is your wife a citizen?

A. Well, I—United States.

Q. Where was she born?

A. She was born in Oklahoma.

Q. Have you or your wife ever been married before?

A. No, sir—yes, yes, sir.

Q. Was your wife married previously?

A. Yes, sir.

Q. Have you been married previously?

A. No, sir. Just my wife.

Q. How did your wife's first marriage terminate?

A. Her husband died.

Q. When did he die?

A. Last March, 1950.

Q. Has your wife only been married one time previously?

A. I cannot understand that exactly.

Q. Where was your last place of employment?

A. Norselanders Seafood Restaurant, Seattle.

Q. How long were you employed there?

A. Oh, it was a month.

Q. What was your salary?

A. Well, \$6.50 a day. I was regular bus boy.

Q. Is your wife employed?

A. No, sir.

Q. Is your wife dependent upon you for her support?

A. Yes, sir.

Q. Do you have any children?

[fol. 40] A. No, sir.

Q. Do you have any property in the United States, such as a home, automobile, furniture?

A. Yes, sir.

Q. What type of property do you have?

A. Well, we have the house.

Q. Is your home mortgaged?

A. Well, it is not yet paid for if that is what you mean.

Q. What is the value of your interest in the home?

A. Well, we bought the place for around \$15,000.

Q. And how much have you paid?

A. We have paid around \$3,500 right now.

Q. Do you own an automobile?

A. No, sir.

Q. Do you have any stocks or bonds?

A. No, sir.

Q. Do you have a bank account?

A. No, sir.

Q. Do you have any cash or other assets?

A. A little bit.

Q. How much? Approximately how much?

A. Well, I have \$22.00 down there in the County Building.

Q. In the event you are found deportable from the United States, Mr. Rabang, to which country do you desire to be sent?

A. Will you repeat that question once more?

Q. In the event you are found deportable from the United States, to which country do you wish to be sent? Do you wish to be sent back to the Philippine Islands?

A. Well, I guess so.

Q. Are you now or have you ever been addicted to drugs?

A. No, sir.

By Examining Officer: I have no further questions.

Hearing Officer to Respondent:

[fol. 41] Q. Then in effect you are not now nor have you ever been a narcotic addict. Is that correct?

A. No, sir.

Hearing Officer to Counsel:

You may examine him.

Counsel to Respondent:

Q. Mr. Rabang, this matter in Federal Court that you examined the indictment on, were there any promises or representations made to you when you entered your plea to the effect that you would not be deported or to the effect that if you did enter a plea, why certain things would or would not happen?

A. I did not make any promise.

Q. Did they make any promise to you?

A. No.

Q. And under that matter you were given probation, is that correct?

A. Yes, sir.

Q. You didn't have to serve any time in the County Jail?

A. No, sir, I got six months suspended and three years probation.

Q. But you didn't have to serve any time?

A. No, sir.

Q. And under these other matters you related to the Examiner, never resulted in any conviction of any kind other than the one where you paid \$100 fine? I mean, you gave a history of the different times you were picked up and that sort of thing, but you have never been convicted of anything except the time you paid the \$100 fine?

A. No, sir.

Q. You have been in the country twenty some years now. Is that correct?

A. Twenty-two years now.

Q. And during that time have you been steadily employed? You have always been working?

A. Yes, sir.

Q. And your work has been seasonal, has it? Going to Alaska?

[fol. 42] A. Yes, sir.

Q. And this work you spoke of as a bus boy, is that merely to fill in during seasons in Alaska?

A. Yes, sir, but after the Alaska season sometime I go to farm and work.

Q. What is the Alaska season? What is considered the Alaska season?

A. It starts from April to August, sometimes September.

Q. And what work do you do up there?

A. I operated a catching can machine.

Q. It is in connection with the salmon packing business?

A. It is.

Q. And who is your employer up there?

A. The Pacific American Fisheries.

Q. How many seasons have you worked for them?

A. Well, I started going in 1939, '40, '41, '42 I didn't go to Alaska, I didn't go for two years. I work for Pacific American Fisheries from 1939 to '41 and—I beg your pardon, I think it was—ya, that is right, '42 I didn't go to Alaska. After that I went to Wingard Packing Company for two years. Then I went back to the Pacific American Fisheries in 1948 up to 1950.

Q. I see. And what sort of salary did you earn on that job, the approximate salary?

A. Approximately around—

Q. Per season?

A. Around \$600.

By Counsel: I have no further questions.

By Examining Officer: I have no further questions.

Hearing Officer to Respondent:

Q. Are you now or have you ever been a member of the Communist Party?

A. No, sir.

Q. Now, then, you mentioned that your assets were approximately \$3500 equity in a home. Is that home in your name and in your wife's name?

[fol. 43] A. In my wife's name.

Q. Is any of your money involved in this equity or is it all your wife's money?

A. Some of my money, too.

Q. Now, how long were you confined or in jail in connection with this last arrest of yours during the pendency of your trial or were you out on bond?

A. I was released on bond.

Q. Is your wife totally dependent upon you for support or does she have outside income or means?

A. Well, she is depending on me.

Q. Has she worked at any time during your marriage?

A. She works in the apartment, some rooms, some transient rooms.

Q. Is this property you mentioned, an apartment house?

A. Yes, sir, it is a small apartment house.

Q. And you rent out various rooms?

A. Quite a few.

Q. How many rooms do you have to rent?

A. We have four rooms and apartment.

Q. Four rooms and your own personal apartment?

A. No, there is one more apartment rented.

Q. One more apartment besides your apartment?

A. Yes, sir.

Q. Then in effect you rent four rooms and another apartment?

A. Yes, sir.

Q. What is your normal income for these rentals? How much do you get a month?

A. We get around \$140 a month.

Q. What payments do you have to make in connection with your mortgage?

A. We pay \$100 a month.

Q. Does your wife have any trade or profession that she would normally work at if your support was taken away from her?

A. Ya, she work in a defense plant before, but she has been very sick lately now and has been in a hospital for [fol. 44] quite awhile.

Q. Is this a passing illness or what is the nature of her infirmity?

A. Well, she gets too nervous and the doctor advise her to stay in the hospital for more than a month.

Q. Did your wife inherit any property from her husband whom you testified died in March of last year?

A. Well, she had a house on 23d Avenue.

Q. Does she receive any income from any insurance that he may have left her in annuities?

A. I don't think so.

Hearing Officer to Counsel:

Q. Do you wish to examine in connection—

A. No.

Hearing Officer to Respondent:

Q. Do you have any evidence or statement to make in your own behalf as to why you should not be deported from the United States?

A. No..

Hearing Officer to Counsel:

Q. Do you have anything more to present?

A. At this time I haven't, but in discussing the matter with Mr. Johnson here before the hearing, we went briefly through the file with him and the thought struck me, and I am sure it struck him, although I am in no position to speak as to his reaction, but there must have been something in Judge Bowen's mind when such a light sentence was imposed on this matter and I would like an opportunity to investigate and see what it is. In my experience,

it is quite unusual for Judge Bowen to give six months in the County Jail and suspend that.

By Respondent: Well, I got three years probation.

By Counsel (continuing): I am certain that some investigation should bring something that would be helpful to us and be in this boy's favor, and in light of that, I must confess I am unfamiliar with the procedure as to whether or not it is proper to ask for a continuance or not, but if it is, I will ask for it.

[fol. 45] Hearing Officer to Counsel:

Q. Before I consider a continuance, I might advise you that notwithstanding the background or the possible conclusions that might have been drawn by the Judge at the time he sentenced the respondent, I, of course, in determining and making my decision in this case am bound by the record, primarily the record of conviction, and the only phase of the record that I may go into would be the indictment setting forth the crime as alleged at that time and beyond that I would be restricted in considering any extenuating circumstances that the Judge may have considered. So for that reason, I cannot see that a continuance for obtaining possible information in that light would be of any effect. However, you may at any time prior to the transmittal of this case to the Commissioner for further consideration, may file a motion to reopen if there is material evidence that you consider should be contained in the record.

A. What period of time will elapse before it is transmitted to the Commissioner?

Q. After I have prepared and served my decision, you will get a period of five days within which to file exceptions thereto, and in the event exceptions are filed, well in either event, it will be forwarded to the Commissioner for further consideration. In this type of case, I may only make a recommended order, my decision is not final. And even if the decision of the Commissioner is objectionable, you may then further appeal to the Board of Immigration Appeals if you so desire.

A. Would we have a hearing before the Commissioner or is it based on the record?

Q. No, it is based on the record. After he gives his findings, you may except to those findings as well, and, of course, it would go to the Board of Immigration Appeals.

A. Well, then, at this time I must again preface it by saying I don't know if it is proper to make this motion, but I would like to make a motion for the reduction of bond and let the boy out on a good sufficient bond?

Q. Well, that motion is one that cannot be considered by me because that is administered by the District Director through his Adjudications Officer here and, of course, I have no control in the matter in so far as that is concerned, so for that reason, I won't consider the motion.

[fol. 46] A. But it is something that can properly be presented?

Q. Yes.

By Hearing Examiner: Off the record.

Hearing Examiner to Respondent:

Q. There being no other matters, you are advised that I am now going to orally discuss for the record a brief summary of the evidence upon which I will base my findings of fact, conclusions of law, and recommended order.

Discussion of the Evidence

The respondent has testified that he is a native of the Philippine Islands and that he believes himself to be American because at the time of his birth, the Philippine Islands was then a protectorate of the United States. The respondent has further testified that he has at no time acquired citizenship of any other country and as at the time of the respondent's birth, natives of the Philippine Islands were then considered Nationals of the United States but not citizens of the United States, and as the respondent has acquired no other citizenship, it is concluded that he is a native and citizen of the Philippine Islands. He has testified that he last entered the United States at Seattle, Washington, on January 24, 1930, at which time he was admitted for permanent residence. This entry has been verified by Exhibit No. 3, which the respondent identified as relating to him, which exhibit shows that he entered on the SS "President Pierce", that his head tax status was exempt

and he was admitted as a citizen of the Philippine Islands. Exhibit No. 4 which the respondent identified as relating to him is a certified copy of Indictment filed by the United States District Court, Western District of Washington, Northern Division, on March 24, 1950, charging the respondent with violation of Section 2554a of Title 26, of the United States Code, in that he unlawfully sold and gave away a quantity of narcotic drugs, to wit: five Morphine Tartrate Syrettes, each containing one-half grain of Morphine Tartrate. On February 12, 1951, the respondent plead guilty to the crime as charged in the indictment, and as a result thereof, was convicted and sentenced to a term of imprisonment of six months, which sentence was suspended and thereupon the respondent was placed upon probation for a period of three years commencing from that date. The respondent has testified that he is not now [fol. 47] nor has he ever been a narcotic addict.

The respondent is presently married to a United States citizen and he has testified that she is dependent upon him for support, that she is employed, however, to the extent that the apartment house which they own has rentals of four transient rooms as well as another apartment which is taken care of by her. From these rentals they obtain approximately \$140 per month. Of this \$140, \$100 is used to reduce the mortgage on the apartment, of which their equity is now \$3,500, the selling price being \$15,000.

Findings of Fact

Upon the basis of all the evidence adduced, it is found:

(1) That the respondent is an alien, a native and citizen of the Philippine Islands;

(2) That the respondent last entered the United States at Seattle, Washington, on January 24, 1930 ex SS "President Pierce", at which time he was admitted for permanent residence;

(3) That the respondent was convicted in the United States District Court, Western District of Washington, Northern Division, on February 12, 1951, for violation of Title 26, U. S. C., Section 2554a, which law relates to narcotics;

(4) That the respondent is not now nor has he ever been a narcotic addict or user of narcotics.

Conclusions of Law

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under the Act of February 18, 1931, as amended, the respondent is subject to deportation in that on or after June 28, 1940, he has been convicted of the violation of a law relating to traffic in narcotics, to wit: selling and giving away narcotic drugs, to wit, Morphine Tartrate Syrettes.

Decision

It is recommended that the alien be deported from the [fol. 48] United States pursuant to law on the charge as stated in the warrant of arrest.

Hearing Officer to Respondent:

Q. Have you understood this decision and recommended order?

A. Yes.

Hearing Officer to Respondent and Counsel:

Q. Do you wish to take any exceptions to this recommended decision?

A. (By counsel) Yes, for the record, we do.

Q. You are advised that you will be given a period of five days from today's date within which to file exceptions to this recommended decision. Do you understand?

A. (By counsel) Yes.

By Hearing Officer: This hearing is now closed.

I certify that the foregoing is a true and correct transcript of the testimony taken by me in the above entitled case.

(S.) Beatrice O. Currie, Stenographer, Book No. 787; 5 copies; pp. 1-16, inc. Transcribed March 29, 1951.

I certify that to the best of my knowledge and belief this record is a true report of everything stated during the course of the hearing, including oaths administered, except statements made off the record.

(S.) David S. Caldwell, Immigrant Inspector (Hearing Officer).

[fol. 49]

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE, SEATTLE WASHINGTON

No. A-5203748

To Chief, Investigation Section, Immigration and Naturalization Service, Seattle, Wn., or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Henry Ragonton Rabang who entered this country at Seattle, Washington ex SS "President Pierce" on the 24th day of January, 1930 has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit: The Act of Feb. 18, 1931, as amended, in that, on or after June 28, 1940, he has been convicted of the violation of a law relating to traffic in narcotics, to wit: Sell and give away narcotic drugs, to wit: Morphine Tartrate Syrettes.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1951." Authority has been granted to release under \$1,000 bond the alien named.

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 27th day of February, 1951.

L. W. Williams, Acting District Director, Seattle District.

[fol. 49a]

Port of _____

Date _____

19

Warrant for Arrest of _____

Served by me at Seattle Wash. on March 21, 1951, at 10:45 A. M. Alien was then informed as to cause of arrest, the conditions of release as provided therein, advised as to right of counsel and furnished with a copy of this warrant.

(S.) Charles R. Smith (Signature of officer), Investigator (Title).

[fol. 50]

April 4, 1951.

United States Department of Justice,
Immigration and Naturalization Service,
815 Airport Way,
Seattle 4, Washington.

Att: Commissioner of Immigration and Naturalization.

Re: File No. A-5203748, Subject: Henry Ragonton Rabang.

Gentlemen:

I have received from your office, over the signature of David S. Callwell, Hearing Officer, a transcript of the hearing held on March 28, 1951, involving the above named individual. Since attending this hearing, I have made an investigation relative to the charge on which Mr. Rabang was indicted and entered a plea of guilty. I find that Mr. Rabang came into the possession of the five Morphine Tartrate Syrettes very casually with absolutely no criminal intent whatsoever, and without any understanding that he was doing wrong. He held the Syrettes for approximately one year and passed them on, on the representation that the party to whom he was giving them was sick and needed some medication. The sale part was entirely immaterial and he was given only a couple of dollars at the time. The purchaser sought him out on many occasions, attempting to complete the transaction and also attempt-

ing to ascertain whether or not Rabang had any source of supply. Rabang of course, had none and so informed purchaser.

Some time went by before he was indicted, but when he was taken into custody he made a full disclosure of the whole matter. As time went on and the case was moving along for a trial date, it became apparent to the United States Attorney's office that the case was very weak and furthermore that the only possible witness to the transaction had left the country and would be unavailable for any trial. The United States Attorney's office at this point had received the requested instructions to dismiss the case, but Rabang, feeling that he had done something wrong, insisted that he should not take advantage of this situation and he entered a plea of guilty in order to do what he thought would clear his record.

I have talked with Mr. Robert Stewart of the United States Probation Office, and he gives a very fine report on [fol. 51] Henry Rabang. He knows the whole story behind the case and feels that it would be extremely unfair to this man to proceed with the deportation on the basis of these facts. The foregoing facts can be verified by Mr. Stewart and by Mr. John Dore, Assistant United States Attorney for this district.

In view of the fact that this man has been in this country some twenty-one years or more, and other than some minor matters, has conducted himself properly, and in view of the fact that he is married, with a wife who is dependent, if not totally, at least to a large extent upon his earnings, and especially in view of the fact that he and his wife are substantial enough to be acquiring some property here, attempting to live a law abiding life, I feel sincerely that the extreme penalty of a deportation in this case is entirely out of line with the offense committed.

I should at this time like to request a further hearing before the Commissioner of Immigration and Naturalization to the end that the decision of the hearing officer as rendered on March 28th, might not become final.

Respectfully yours, (S.) J. Edmund Quigley.

JEQ:he

[fols. 52-53] LETTER OF NOTIFICATION OF
HEARING (omitted in printing)

[fol. 54]

Port of Seattle, Washington,
Date February 13, 1951.

I Hereby Certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

- (1) Manifest No., 12336/16-4; Class, Third.
- (2) S. S., President Pierce; Line, President.
- (3) Port at which admitted, Seattle, Washington; Date, 1-24-30.
- (4) Name, Rabang Hermogenes; Age, 20; Sex, M.
- (5) Married, S; Occupation, —; Able to read, —; Write, —.
- (6) Citizen of, Philippine Islands; Race, Filipino.
- (7) Place of birth, Sta. Catalina, Ilocos, P. I.
- (8) a. Class of immigration —; visa, —; No. —; Issued at —; Date —. b. Transit Certificate No. —; Issued at —; Date —.
- (9) Last permanent resident, —.
- (10) Name and complete address of nearest relative or friend in country whence alien came, —.
- (11) Destination, P. O. Box No. 64, Visalia, Cal.— By whom passage paid, —; Money brought, —.
- (12) Whether in U. S. before, —; When, —; Where, —.
- (13) Whether going to relative or friend, —; Give name and complete address: —.
- (14) Purpose of coming to U. S., reside; Intended length of stay, perm.
- (15) Condition of health, —.
- (16) Height, —; Complexion, —; Color of hair, —.
- (17) Color of eyes, —; Identification marks, —.
- (18) Examined by Inspector, J. P. Sanderson; Head tax paid, Exempt adm as cit of P. I.
- [fol. 55] (19) Accompanied by —; How admitted, Primary.

(20) Purpose and period of time for which admitted,
Perm Residence.

(21) Remarks: ar No. 5-203-748.

(Signature) — — —, Acting Verification Clerk
(Official title), (S) Genevieve K. Hahn,

Form I-404, U. S. Department of Justice, Immigration
and Naturalization Service, Edition of 12-15-43.

[fol. 56] UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 48120

UNITED STATES OF AMERICA, Plaintiff,

vs.

HENRY RAGONTON RABANG, Defendant.

Indictment

The Grand Jury charges:

Count I

That on or about March 24, 1950, at Seattle, in the Northern Division of the Western District of Washington, Henry Ragonton Rabang did unlawfully sell and give away a quantity of narcotic drugs, to-wit, five Morphine Tartate Syrettes, each containing one-half grain of Morphine Tartrate, not in pursuance of a written order of the person to whom such Morphine Tartrate was sold and given away and not on a form issued in blank for that purpose by the Secretary of the Treasury.

All in violation of Sec. 2554a, Title 26, U. S. C.

A True Bill.

(S) David E. Lockwood, Foreman, (S) J. Charles
Dennis, United States Attorney, (S) John F. Dore,
United States Attorney.

[fol. 57] Endorsed; Presented to the Court by the Fore-
man of the Grand Jury in open Court in the presence of

the Grand Jury, and Filed in the U. S. District Court, July 13, 1950, Millard P. Thomas, Clerk, By Lee L. Bruff, (S), Deputy.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest: Millard P. Thomas, Clerk, U. S. District Court, Western District of Washington.

By William Ferguson, Deputy Clerk.

[fol. 58] UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 48120

UNITED STATES OF AMERICA, Plaintiff,

vs.

HENRY RAGONTON RABANG, Defendant

Judgment, Sentence and Order of Probation

On this 12th day of February, 1951, the attorney for the Government, and the defendant, Henry Ragonton Rabang, appearing in person, and being represented by Will G. Beardslee his attorney, the Court finds the following:

That prior to entering his plea, a copy of the Indictment was given the defendant; that the plea of guilty was entered by the defendant and was made voluntarily with understanding of the nature of the charge; that the Probation Officer of this District has made a presentence investigation and report to the Court; now, therefore,

It is adjudged that the defendant has been convicted upon his plea of guilty of the offense of violation of Section 2554a, Title 26, U. S. C., as charged in Count I of the Indictment, there being only one count in the Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being [fol. 59] shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged in Count I of the Indictment and is convicted.

It is adjudged and ordered that the defendant be committed to the custody of the Attorney General of the United States or his authorized representative for confinement in the King County Jail, Seattle, Washington, or such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of six (6) months on Count I of the Indictment.

Provided, however, that the execution of the service of the sentence imposed on Count I shall be and it is hereby Suspended and the defendant placed on probation as provided by law for a period of Three (3) Years, commencing this date, upon the following conditions:

1. The defendant shall be placed upon probation as provided by the statutes of the United States relative to probation during his good behavior and until further order of the Court.

2. That the defendant doesn't unlawfully possess or use narcotics in any form.

3. That said defendant does not during said probationary period violate any laws of the United States or of any state or community where he may be, and shall report [fols. 60-97] regularly to the United States Probation Officer at the times and in the manner said officer shall direct.

Done in open Court this 12 day of February, 1951.

(S.) John C. Bowen, United States District Judge.

Presented by: John F. Dore, Asst. United States Attorney.

Endorsed: Filed in the United States District Court Western District of Washington Northern Division, Feb 12 1951, Millard P. Thomas, Clerk; By Truman Egger, Deputy.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest: Millard P. Thomas, Clerk, U. S. District Court, Western District of Washington, By William Ferguson (S.), Deputy Clerk.

Exhibit No. —

[fol. 98]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISIONHENRY RAGONTON ~~RABANG~~, Petitioner,

vs.

JOHN P. BOYD, District Director, Immigration & Natural-
ization Service, Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW—July 29, 1955

The above cause having been heard before this Honorable Court on July 18, 1955, both parties being represented by counsel and having been fully considered by the Court upon the pleadings, briefs and argument of counsel, no testimony being offered;

Now, therefore, the Court being fully advised makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

That Petitioner is a native of the Philippine Islands, an alien who has never been naturalized nor has otherwise become a citizen of the United States.

II

That petitioner last entered the United States at Seattle, Washington on January 24, 1930 and has resided in the United States at all times since.

[fol. 99]

III

That on February 12, 1951 in the United States District Court, Seattle, Washington, he was convicted on his plea

of guilty of the crime of selling and giving away narcotic drugs, in violation of Title 26, U. S. C., Section 2554(a). He was sentenced to confinement in the King County Jail for a period of six months on Count One of the Indictment. That sentence was suspended and he was placed on probation for three years.

IV

That deportation proceedings were instituted against the petitioner February 27, 1951, on the ground that on or after June 28, 1940 he had been convicted of the violation of a law relating to traffic in narcotics, to wit: sell and give away narcotic drugs in the form of morphine tartrate syrettes; that the recommendation of the hearing officer was adopted by the Acting Assistant Commissioner and petitioner ordered deported on October 26, 1951, and that a subsequent appeal was dismissed by the Board of Immigration Appeals.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

I

That petitioner was convicted February 12, 1951 of a violation of laws relating to traffic in narcotics within the [fol. 100] meaning of former Title 8, U. S. C., Section 156(a).

II

That petitioner was at all times herein material, an alien subject to deportation under the above named statute.

III

That the administrative deportation proceedings and the warrant of deportation issued prior to the effective date of the Immigration & Nationality Act of 1952 and as such remained valid under the savings clause of that act.

Done in open court this 29 day of July, 1955.

(S.) William J. Lindberg, United States District Judge.

Approved as to Form:

— — —, Attorney for Petitioner.

Presented and approved as to Form:

(S.) F. N. Cushman, Assistant United States Attorney.
Copy mailed to C. T. Hatten, July 28, 1955.

(S.) F. N. Cushman:

Subscribed and sworn to before me this 28th day of July, 1955.

(S.) Marian Miller, Deputy Clerk.

[fol. 101] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

HENRY RAGNONTON RABANG, Petitioner,

vs.

JOHN P. BOYD, District Director, Immigration & Natural-
ization Service, Respondent

ORDER DENYING APPLICATION FOR HABEAS CORPUS
July 29, 1955

This matter having been heard by the Court on July 18, 1955, both parties being represented by counsel and the Court having considered the pleadings and arguments of counsel and further having heretofore entered Findings of Fact and Conclusions of Law, now therefore,

It is ordered, adjudged and decreed that the application for habeas corpus and other relief be and the same is hereby denied and the order to show cause heretofore issued is discharged.

Done in open court this 29thth day of July 1955.

(S.) William J. Lindberg, United States District
Judge.

Approved as to Form:

— — —, Attorney for Petitioner.

Presented and approved:

(S.) F. N. Cushman, Assistant United States Attorney.

* * * * *

Copy mailed to C. T. Hatten July 28, 1955. F. N. Cushman.

Subscribed & Sworn to before me this 28th day of July 1955. Marion Miller, Deputy Clerk.

— — —

[fol. 102] IN UNITED STATES DISTRICT COURT

NOTICE TO COUNSEL OF ACTION OF COURT

August 4, 1955

Mr. C. T. Hatten
Attorney at Law
New World Life Bldg.
Room 424
Seattle, Washington

Dear Mr. Hatten:

This is to advise you that the Order denying the application for habeas corpus and other relief was signed on the 29th day of July, 1955, by the Hon. William J. Goodberg and entered in the Civil Docket on July 30, 1955 in Cause No. 3949, Rabang vs. Boyd. This notification is in accordance with Rule 77(d) FRCP.

Yours very truly, Millard P. Thomas, Clerk, By (S)
Lois, Deputy.

Im:s.

[fol. 103] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL.

Notice is hereby given that Henry Ragonton Rabang, petitioner above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain judgment denying petitioners request for a writ of habeas corpus, said judgment having been entered in this case on the 30th day of July 1955, and having been signed by the Hon. William J. Lindberg on the 29th day of July 1955.

(S) C. T. Hatten, Attorney for Petitioner.

[fol. 104] BOND FOR COSTS ON APPEAL. (omitted in printing).

[fol. 105] LETTER OF TRANSMITTAL OF NOTICE OF APPEAL.

[fols. 106-107] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 108] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

ORDER OF SUBMISSION—May 10, 1956

Ordered appeal herein argued by Mr. C. T. Hatten, counsel for the Appellant, and by Mr. Richard F. Broz, Assistant U. S. Attorney, counsel for the Appellee, and submitted to the Court for consideration and decision.

[fol. 109] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

ORDER DIRECTING FILING OF OPINION AND FILING AND
RECORDING OF JUDGMENT—June 14, 1956

Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 110] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 14,886

HENRY RAGONTON RABANG, Appellant,

vs.

JOHN P. BOYD, District Director, Immigration and
Naturalization Service, Appellee.

Appeal from the United States District Court, Western
District of Washington, Northern Division.

OPINION—June 14, 1956

Before: POPE and CHAMBERS, Circuit Judges, and BOLDT,
District Judge.

BOLDT, District Judge

The only issues in this habeas corpus proceeding are whether appellant is an alien within the meaning of 46 Stat. 1171, as amended,¹ and if so whether appellant, having

¹The Act of February 18, 1931, chapter 224, 46 Stat. 1171, as amended by Section 21, Chapter 439, Title II, Act of June 28, 1940, 54 Stat. 673, former 8 U. S. C. 156(a) provides:

"Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in

entered and remained in the United States as a national, is deportable under the Act.

[fol. 111] Appellant was born in the Philippine Islands in 1910 and has continually resided in the United States since his arrival as a national in 1930. He never has been and is not now a citizen of the United States.

On February 12, 1951, in the District Court for the Western District of Washington, appellant was convicted on a guilty plea of the crime of selling and giving away narcotic drugs in violation of 26 U. S. C. A. 2554(a).² A penitentiary sentence was suspended and appellant was placed on probation for three years.

On February 27, 1951, the Immigration and Naturalization Service instituted proceedings at Seattle for deportation of appellant under the act referred to on the ground that after the effective date of the act appellant had been convicted of violation of 26 U. S. C. A. 2554(a), a "law regulating traffic in narcotics." On October 26, 1951, appellant was ordered deported and subsequent appeal from such order was dismissed by the Board of Immigration Appeals. Thereafter an appeal to this court from the deportation order was dismissed for lack of prosecution. Appellant's petition for writ of habeas corpus, show cause, and declaratory judgment filed May 25, 1955, after hearing was denied by order of the district court and this appeal is from that order.

Appellant specifies error by the district court: (1) in

this act) who, after the enactment of this act, shall be convicted for violation of or conspiracy to violate any statute of the United States . . . taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, . . . shall be taken into custody and deported. . . .

"It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550(a) except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary." 26 U. S. C. A. 2554(a).

finding that appellant now is an alien; (2) in determining that appellant, who came to the United States in the first instance as a national and did not "enter" as an alien, lawfully can be deported; and (3) in holding that a national of the United States can be divested of such status without a voluntary act of denationalization by such individual and solely from the fact that complete independence from the United States has been granted to persons residing in the territory in which the national was born.

In *Cabebe v. Acheson*, 183 F. 2d 795 (1950) this court held that "the United States government intended the status of Filipinos, regardless of domicile or place of residence [fol. 112] at the date of Philippine independence, to be entirely separate from any phase of adherence to the United States. . . . We hold that Cabebe is . . . an alien." Under varying circumstances the same principle was reaffirmed in *Mangaoang v. Boyd*, 205 F. 2d 553 (1953) and again in *Gonzales v. Barber*, 207 F. 2d 398 (1953), affirmed on other grounds in 347 U. S. 637.³ In these decisions, to which we now adhere, this court has declined to follow the contentions of appellant in the present case.

The particular statute supporting the order here in question by its terms is applicable to "any alien." It does not directly or impliedly make "entry" a prerequisite to deportation as do the statutes involved in the *Mangaoang* and *Gonzales* cases. The rationale of the cited cases is contrary to petitioner's contention that the power to deport is based on the power to exclude and can only be applied to those who at the time of entry might lawfully have been excluded.

The order of the district court is affirmed.

[File endorsement omitted.]

³ *Gonzales*, like *Rabang*, entered continental United States as a national and not as an alien. He was held to be an alien by reason of the Philippine Independence Act of 1934, 48 Stat. 456, but not subject to deportation under Section 19 of the Immigration Act of 1917 under which entry as an alien is a prerequisite to deportation. In affirming the judgment the Supreme Court did not discuss the

[fol. 113] IN UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 14886

HENRY RAGONTON RABANG, Appellant,

vs.

JOHN P. BOYD, District Director, Immigration and
Naturalization Service, Appellee

JUDGMENT—Filed and Entered June 14, 1956

Appeal from the United States District Court for the
Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the
Record from the United States District Court for the
Western District of Washington, and was duly submitted.

On consideration whereof, It is now here ordered and
adjudged by this Court, that the Order of the said District
Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

[fol. 114] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 115] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1956

No. 403

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1956

The petition herein for a writ of certiorari to the United
States Court of Appeals for the Ninth Circuit is granted,
and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of
the transcript of the proceedings below which accompanied
the petition shall be treated as though filed in response to
such writ.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.

FILED

SEP 10 1956

JOHN T. FEY, Clerk

No. 403

Supreme Court of the United States

OCTOBER TERM, 1956

HENRY RAGONTON RABANG, *Petitioner.*

vs.

JOHN P. BOYD, District Director, Immigration and
Naturalization Service, *Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

JOHN CAUGHLAN,
Counsel for Petitioner.

702 Lowman Building,
Seattle, Washington.

No.

Supreme Court of the United States

OCTOBER TERM, 1956

HENRY RAGONTON RABANG, *Petitioner.*

VS.

JOHN P. BOYD, District Director, Immigration and
Naturalization Service, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOHN CAUGHLAN,
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THE ARGUS PRESS, SEATTLE

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Supreme Court of the United States

OCTOBER TERM, 1956

HENRY RAGONTON RABANG, *Petitioner,*

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service,
Respondent.

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above case on June 14, 1956.

CITATION TO OPINION BELOW

The District Court filed no written opinion in this case. The opinion of the Court of Appeals (R. 110-112) set forth in Appendix B. below, pp. 19-21, is reported in F.2d

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1956 (R. 113). No petition for rehearing was filed. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether a Filipino who was born a national of the United States and who has resided continuously in the United States since 1930 is subject to deportation for conviction of an offense involving narcotics although he has never entered the United States as an alien?

2. Whether a Filipino who has resided continuously in the United States since 1930 lost his United States nationality by reasons of the acts relating to the independence of the Commonwealth of the Philippine Islands so as to be deportable as an alien?

STATUTES INVOLVED

The statutory provisions involved are 46 Stat. 1171, Ch. 244, as amended by 54 Stat. 673 (former 8 U.S.C. §156(a)), 39 Stat. 889 (former 8 U.S.C. §155—section 19 of the Act of Feb. 5, 1917) relating to the deportation of aliens convicted of offenses involving narcotics, and certain provision of the Philippine Independence Act, and an amendment, 48 Stat. 456 and 53 Stat. 1226. They are printed in Appendix A, below, pp. 13-18.

STATEMENT

Petitioner was born a United States national in the Philippine Islands in 1910, and has resided in the United States continuously since he came here January 24, 1930 (R. 5, 111). On February 12, 1951, he was convicted of an offense involving narcotics, a violation of 26 U.S.C., §2554(a), received a six-month sentence which was suspended and was placed on three years' probation (R. 58). Having fulfilled the terms of his probation he has since been duly discharged from it (R. 6, 7).

On March 21, 1951, petitioner was arrested on a warrant charging that he was an alien who had been convicted of a violation of law involving narcotics and hence was deportable under the Act of February 18, 1931, as amended, former 8 U.S.C. §156(a) (R. 6, 49). On October 26, 1951, the Acting Assistant Commissioner ordered petitioner deported on the above stated charge. The decision was affirmed by the Board of Immigration Appeals on February 6, 1952 (R. 17). Thereafter, on March 1, 1955, "in view of the decision of the United States Supreme Court in the case of *Barber v. Gonzales*," 347 U.S. 637, the Acting Regional Commissioner moved the Board of Immigration Appeals to reopen the case for reconsideration "with a view of terminating the proceedings or for such other action as it deems appropriate" (R. 21, 22). On April 7, 1955, the Board of Immigration Appeals decided that *Barber v. Gonzales* was inapplicable to the instant case, since the act under which petitioner's deportation had been ordered "does not set up entry as an alien as an essential element to deportability," but only "requires . . . that the person sought to be deported be an alien and that he . . . have been convicted for violation of any law regulating traffic in narcotics" (R. 17, 18, 19).

Thereupon petitioner filed in the District Court a petition for habeas corpus, for declaratory relief and for review of administrative proceedings, invoking jurisdiction under 28 U.S.C., §§2241, 2201 and 2202, and 5 U.S.C., §1009 (R. 4-10). Petitioner alleged that he was not deportable because he was a national rather than an alien, having never by any voluntary act relinquished his nationality, and that, having made no entry

into the United States, he was not subject to deportation (R. 8). The District Court dismissed the petition after making Findings of Fact and Conclusions of Law that petitioner was at all material times an alien subject to deportation under the statute (R. 100-102).

Jurisdiction of the Court of Appeals was invoked under 28 U.S.C. §§2191 and 2253. That court affirmed the District Court on the authority of *Cabebe v. Acheson* (C.A. 9, 1950) 183 F.2d 795; *Mangaoang v. Boyd* (C.A. 9, 1953) 205 F.2d 553, and *Gonzales v. Barber* (C.A. 9, 1953) 207 F.2d 398 (R. 111, 112).

REASONS FOR GRANTING THE WRIT.

I.

The petitioner here, as in *Barber v. Gonzales*, 347 U.S. 637, never made entry into the United States. He was born a national of the United States in the Philippine Islands, came here as a national and, as such, owed permanent allegiance to the United States. In *Barber v. Gonzales, supra*, the court held that under a statute which made an alien deportable who was more than twice convicted of any crime involving moral turpitude committed at any time after entry, a Filipino commencing his residence in the United States prior to the Philippine Independence Act could not be deported since he made no entry.

Although the words "after entry" are not used in the Act of February 18, 1931 (former 8 U.S.C. §156 (a)), Appendix A 1, p. 13, below: that act. by its terms was made dependent upon section 19 of the Act of February 5, 1917 (former 8 U.S.C. §155); Appendix A 2, p. 14, below. This section enumerates various classes of

deportable aliens, describing some in terms of entry, e.g., "within five years after entry," "at any time after entry," "prior to entry," "within three years after entry," whereas other classes, such as prostitutes or persons dealing with prostitutes, persons convicted of unlawful importation of alien, and of other offenses under the act, are defined without reference to entry. The enumeration of these specific classes is followed, however, by general provisions applicable to all classes. The general portion of the statute includes the following proviso: "That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned *irrespective of the time of their entry into the United States*" (emphasis added). If this language is incorporated by reference into the 1931 Act, it would appear that the decision of this case below is in direct conflict with *Barber v. Gonzales*, 347 U.S. 637.

The court below did not consider in its opinion in this case the relationship of the general language of section 19 of the Act of February 5, 1917, to the Act of February 18, 1931, although it had done so many years previously in *Dang Nam v. Bryan* (C.C.A. 9, 1934) 74 F.2d 379, holding that the proviso immediately preceding the one just quoted in the same section, excepting from deportation those sentenced for crime when the judge recommends against deportation, applied to the 1931 Act because of the dependency of that act upon section 19.¹ The court below, disregarding the fact that

¹ In *United States ex rel. DeLuca v. O'Rourke* (C.A. 8, 1954) 213 F.2d 759, the court also reached the conclusion that section 19 (former 8 U.S.C. sec. 155) applied to the 1931 Act (former 8 U.S.C. sec. 156(a)). To the same effect see *Ex parte Robles-Rubio* (N.D., Cal. S.D., 1954)

section 19(a) was before the court in this case, by reference in the 1931 Act, as a different part of the same section had been in *Barber v. Gonzales*, held that "entry" was not "directly or impliedly a prerequisite to deportation" of petitioner. The result reached appears to be such a plain departure from the precedent established in the *Barber* case as to require correction by this court.

II.

The decision below should be reviewed even assuming that the statutes involved do not require entry as a precondition to deportation under their terms. While this court has never explicitly decided that "entry" in the sense of the arrival of an alien from some foreign port or place is a necessary precondition of deportation independent of statutory language, such a conclusion seems to be necessarily implicit in the decisions of the court.

For, while it has been broadly asserted that the power to exclude or expel aliens is inherent in national sovereignty, *Harisiades v. Shaughnessy*, 342 U.S. 580, 587, 588, this power has never been regarded as any more than a logical and necessary corollary of the power to exclude in the first instance. *Ekiu v. United States*, 142 U.S. 651, 659. "Entry" is thus more than a term of art in a statute. It is a description of the process of passing the "formidable exclusion barriers," from which the implied power to expel arises. Thus,

¹19 F.Sup. 610; cf. *Ex parte Eng* (N.D., Cal., S.D., 1948) 77 F.Sup. 74; contra *United States ex rel. Magri v. Wixon* (S.D., N.Y., 1931) 53 F.2d 475.

when "there . . . [is] in legal contemplation no entry, there . . . [can] be no exclusion." *Alcantra v. Boyd* (C.A. 9, 1955) 222 F.2d 445; *Carmichael v. Delaney* (C.A. 9, 1948) 170 F.2d 239, 243, cf. *Delgadillo v. Carmichael*, 322 U.S. 388.

It has never been suggested by this court that the inherent power based upon sovereignty extended beyond foreign relations, and commerce and intercourse with foreign powers, and their subjects (aliens). Thus this court in *Harisiades* noted that the "policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power and the maintenance of republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." At the same time the court noted at page 585 that the alien there involved had "perpetuated a dual status as an American inhabitant but foreign citizen" entitled to "claim protection against our government" and retaining "immunities from burdens which the citizen must shoulder," including "certain dispensations from conscription from any military service." The situation here is entirely different. No such dual status is involved. On the contrary the petitioner by law owed allegiance to the United States. *Barber v. Gonzales*, 347 U.S. 637, *Gonzales v. Williams*, 192 U.S. 1.

The decision below that one who has never entered the United States as an alien coming from a foreign port or place may nevertheless be deported is a concept so novel and sweeping, and seemingly so contrary

to the whole concept of the power to deport enunciated by this court as well as by the Congress itself² as to require careful scrutiny and review. Not only may such power vitally affect the approximately 40,000 Filipinos of foreign birth residing in this country, it has implications affecting the rights of American-born citizens. For, if the Congress has the power to expel nationals, now declared by congressional fiat to be aliens, may not the same power be used for the expulsion of native-born citizens involuntarily denaturalized for political or other offenses and thus subject to the perils of banishment and exile?

III.

A second and equally important reason for a review of the decision below is that the court's judgment is based upon a determination that petitioner is presently an alien despite the fact that he commenced his residence in the United States as national and has never voluntarily done anything to give up that nationality and allegiance to this country.³ The determination of whether Filipino nationals who came to this country prior to the Philippine Independence Act of 1934, 48

²"The power of Congress to control immigration stems from the sovereign authority of the United States as a nation and from the constitutional power of Congress to regulate commerce with foreign nations. Every sovereign nation has power, inherent in sovereignty and essential to self-preservation, to forbid entrance of foreigners within its dominions, or to *admit them* only in such cases and *upon such conditions* as it may see fit to prescribe. Congress may exclude aliens altogether or prescribe terms and conditions upon which they come into or remain in this country." (House Report No. 1513, March 13, 1952, p. 5. Emphasis supplied.)

³On the contrary, petitioner has always expressed his intention of becoming an American citizen (R. 5, 55) and has always claimed American nationality.

Stat. 456, are now aliens importantly affects the status of from 23,000 to 35,000 resident Filipinos.⁴

The important question of the national status of Filipinos who came to the United States as nationals and have continuously resided here since has never been determined by this court, although the contentions here advanced were recently before the court. *Barber v. Gonzales*, 347 U.S. 637, 643.⁵ This court should resolve this important question and remove from question the national status of resident Filipinos. The court below rested its decision in this case on the earlier case of *Cabebe v. Atcheson* (C.A. 9, 1950) 183 F.2d 795, where the Philippine Independence Act of 1934 was considered in an action brought to determine nationality. The court noted that "the question is not directly answered (but, as we think, it was inferentially answered). . . .

⁴The United States census of population, 1950, special report P-E No. 3-B "Non-white population by race," Table 6, lists the total Filipino population in the United States as 61,636. Table 30 of this same report gives the following figures with respect to foreign-born Filipino population:

Total foreign-born	39,295
Naturalized	15,389
Alien	15,908
Citizenship not reported	7,998

Since quota immigration from the Philippine Islands has been limited to total of 1,600 from 1935 to 1951, it is assumed that all but a few thousand of the total foreign-born Filipino population commenced residence in this country as nationals prior to 1935. Even the status of naturalized Filipino citizens is affected by the decision below in that under the decision below a Filipino who is denaturalized, could be subjected to deportation for acts occurring or status acquired while a citizen. Cf. *Eichenlaub v. Shaughnessy*, 338 U.S. 521.

⁵In footnote 4 to the opinion the court stated: "The respondent also attacks the validity of the deportation order on the grounds: (1) that he made no 'entry' because he was not an alien when he came to this country . . . (3) that he is not an alien today because Congress lacked the power to deprive him of his status as a national. Our disposition of the case makes it unnecessary to consider these contentions."

There is no special reference of inclusion or exclusion in any of these acts to Filipinos who were no longer residing in the Islands at the date of their independence." Loss of nationality, however, should not be predicated upon implication or inference, but only upon unmistakable language accompanied by a voluntary act of the person asserted to have lost his nationality. Cf. *Perkins v. Elg*, 307 U.S. 325, 334, *Savorgnan v. United States*, 338 U.S. 491, 497, 498; *McKenzie v. Hare*, 239 U.S. 299. It may be questioned whether Congress has the power by fiat to declare a loss of nationality with respect to resident nationals. Cf. *United States v. Wong Kim Ark*, 169 U.S. 649, 703.

Petitioner's national status is closely akin to that of citizenship, but is distinct from the status of an alien who is "one born out of the jurisdiction of the United States and who has not been naturalized under their constitution and laws." *Low Wah Suey v. Backus*, 225 U.S. 460, 473.

Petitioner was born a national, and has owed no dual allegiance or nationality. *Toyota v. United States*, 268 U.S. 402, *Gonzales v. Williams*, 192 U.S. 1. Nationality cannot be equated with alienage, and therefore should not be subject to forfeiture or impairment without some voluntary act of expatriation or renunciation.

In *Perkins v. Elg*, 307 U.S. 325, 337, this court held that abrogation of the right to elect nationality must be based upon explicit language of a statute and that rights of citizenship should not be "destroyed by an ambiguity."

Certainly the same considerations should apply to loss of nationality, and even assuming that congressional power to decree resident nationals aliens, the exercise of such power, being in effect a declaration of forfeiture, should never be presumed. On the contrary a doubtful statute should be construed to avoid such results, *Washington Pub. Co. v. Pearson*, 306 U.S. 30, 41; *United States v. One Ford Coach*, 307 U.S. 219, 226; *Knickerbocker Life v. Norton*, 96 U.S. 234, 242, especially where, as in this case, the construction given the statute by the court below results not only in a forfeiture of nationality, but also in "the equivalent of banishment or exile." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10. In view of the importance of the question involved,⁶ the drastic consequences of the conclusions of the court below, this court should call for a review by certiorari.

⁶The present case is one of two recent cases in which determination of the alienage of a Filipino born a United States national has resulted in affirmation of a deportation order. See *Resurreccion-Talavera v. Barber* (C.A. 9, 1956) 231 F.2d 524 (decided March 28, 1916). This case was not cited by the court in its decision below. In *Cabebe v. Acheson*, 183 F.2d 795, no question of deportation was involved. It should also be noted that Section 8 of the Independence Act of 1934, 48 Stat. 462, placed residence in Hawaii on an entirely different basis from residence in the continental United States, in that a Filipino could enter Hawaii without restriction after 1934, but could only enter the United States as a quota immigrant. In *Mangaoang v. Boyd* (C.A. 9, 1953) 205 F.2d 553, cert. den. 346 U.S. 876, and in *Gonzales v. Barber*, 207 F.2d 398, the lower court's opinion that persons born in the Philippine Islands and entering the United States prior to the Philippine Independence Act are no longer United States nationals, was not a necessary part of the decision which rested in both instances upon the conclusion that the persons sought to be deported had not made the "entry" required by the pertinent statute.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Seattle, Washington.

APPENDIX A

1.

Act of February 18, 1931 (P.L. 683), 46 Stat. 1171,
Ch. 224:

AN ACT to Provide for the Deportation of Aliens Convicted and Sentenced for Violation of Any Law Regulating Traffic in Narcotics.

Be It Enacted by the Senate and House of Representatives in Congress assembled, That any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after the enactment of this Act shall be convicted and sentenced for violation or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States.

Sec. 21 of the Act of June 28, 1940, 54 Stat. 673, amending the foregoing:

Sec. 21. The Act entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics," approved February 18, 1931, is amended—

- (1) By striking out the words "and sentenced";
- (2) By inserting after the words "any statute of the United States" the following "or of any

state, territory, possession, or of the District of Columbia"; and

- (3) By inserting after the word "heroin" a comma and the word "marihuana."

2.

Act of February 5, 1917, section 19, 39 Stat. 889:

Sec. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States, or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have risen subsequently to landing; except as hereinafter provided any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude; committed within five years after entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution, or practicing prostitution after such alien shall have entered the United States or who shall receive, share in or derive bene-

fit from any part of the earnings of any prostitute; any alien who manages or who is employed by, in or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented, by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who after being excluded and deported or arrested and deported as a prostitute or as a procurer or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section 4 hereof; any alien who was convicted, or who admits conviction, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port for entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes, the exclusion or deportation of which is prescribed by the Act shall not invest such female with United States citizenship if the marriage of such female

shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provisions of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to the representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, that the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, that the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, that any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every other case where any person is ordered deported from the United States under the provisions of this act or of any law or treaty, the decision of the Secretary of Labor shall be final.

The Philippine Independence Act of March 24, 1934,
48 Stat. 456, 48 U.S.C.A. §1231 *et seq.*

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS:

Sec. 2(a). The constitution formulated and drafted shall be Republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

* * *

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE:

Sec. 8(a). Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in Section 17.

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13(c)), this section, and all other laws of the United States, relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty * * *

* * *

IMMIGRATION AFTER INDEPENDENCE:

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the

immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries..

4.

Act of August 7, 1939, 53 Stat. 1226, amending the Philippine Independence Act of 1934.

* * * Sec. 2—Sec. 8 of the said Act of March 24, 1934, is hereby amended by adding thereto a new subsection as follows:

(d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippines shall enjoy in the United States all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands.

APPENDIX B

OPINION OF THE COURT BELOW

Before: POPE and CHAMBERS, Circuit Judges, and
BOLDT, District Judge

BOLDT, District Judge

The only issue in this habeas corpus proceeding are whether appellant is an alien within the meaning of 46 Stat. 1171, as amended,¹ and if so whether appellant, having entered and remained in the United States as a national, is deportable under the Act.

Appellant was born in the Philippine Islands in 1910 and has continually resided in the United States since his arrival as a national in 1930. He never has been and is not now a citizen of the United States.

On February 12, 1951, in the District Court for the Western District of Washington, appellant was convicted on a guilty plea of the crime of selling and giving away narcotic drugs in violation of 26 U.S.C.A. 2554 (a).² A penitentiary sentence was suspended and appellant was placed on probation for three years.

¹The Act of February 18, 1931, chapter 224, 46 Stat. 1171, as amended by Section 21, Chapter 439, Title II, Act of June 28, 1940, 54 Stat. 673, former 8 U.S.C. 156(a) provides:

"Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this act) who, after the enactment of this act, shall be convicted for violation of or conspiracy to violate any statute of the United States . . . taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, . . . shall be taken into custody and deported. . . ."

²"It shall be unlawful for any person to sell, barter, exchange, or give away any of the drugs mentioned in section 2550(a) except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary." 26 U.S.C.A. 2554(a).

On February 27, 1951, the Immigration and Naturalization Service instituted proceedings at Seattle for deportation of appellant under the act referred to on the ground that after the effective date of the act appellant had been convicted of violation of 26 U.S.C.A. 2554(a), a "law regulating traffic in narcotics." On October 26, 1951, appellant was ordered deported and subsequent appeal from such order was dismissed by the Board of Immigration Appeals. Thereafter an appeal to this court from the deportation order was dismissed for lack of prosecution. Appellant's petition for writ of habeas corpus, show cause, and declaratory judgment filed May 25, 1955, after hearing was denied by order of the district court and this appeal is from that order.

Appellant specifies error by the district court: (1) in finding that appellant now is an alien; (2) in determining that appellant, who came to the United States in the first instance as a national and did not "enter" as an alien, lawfully can be deported; and (3) in holding that a national of the United States can be divested of such status without a voluntary act of denationalization by such individual and solely from the fact that complete independence from the United States has been granted to persons residing in the territory in which the national was born.

In *Cabebe v. Acheson*, 183 F.2d 795 (1950) this court held that "the United States government intended the status of Filipinos, regardless of domicile or place of residence at the date of Philippine independence, to be entirely separate from any phase of adherence to the United States. . . . We hold that Cabebe is . . . an alien." Under varying circumstances the same prin-

ciple was reaffirmed in *Mangaoang v. Boyd*, 205 F.2d 553 (1953) and again in *Gonzales v. Barber*, 207 F.2d 398 (1953), affirmed on other grounds in 347 U.S. 637.³ In these decisions, to which we now adhere, this court has declined to follow the contentions of appellant in the present case.

The particular statute supporting the order here in question by its terms is applicable to "any alien." It does not directly or impliedly make "entry" a prerequisite to deportation as do the statutes involved in the *Mangaoang* and *Gonzales* cases. The rationale of the cited cases is contrary to petitioner's contention that the power to deport is based on the power to exclude and can only be applied to those who at the time of entry might lawfully have been excluded.

The order of the district court is affirmed.

(Endorsed:) Opinion. Filed, Jun. 14, 1956,

Paul P. O'Brien, Clerk.

³ *Gonzales*, like *Rabang*, entered continental United States as a national and not as an alien. He was held to be an alien by reason of the Philippine Independence Act of 1934, 48 Stat. 456, but not subject to deportation under Section 19 of the Immigration Act of 1917 under which entry as an alien is a prerequisite to deportation. In affirming the judgment the Supreme Court did not discuss the question now presented.

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**In the
Supreme Court of the United States**

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, *Petitioner*

vs.

**P. BOYD, District Director, Immigration and
Naturalization Service, *Respondent*.**

**WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH DISTRICT**

BRIEF FOR THE PETITIONER

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**In the
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No. 403

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Appeals (R. 46-48) is reported at 234 F.2d 904.

JURISDICTION

The judgment of the Court of Appeals was entered on June 14, 1956 (R. 49). The petition for a writ of certiorari was filed September 10, 1956; and was granted November 13, 1956 (R. 49). The jurisdiction of this court rests on 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether a Filipino who was born a United States national and who has resided continuously in the continental United States since he came here as a national in 1930, may be deported as an alien for conviction of an offense involving narcotics?

STATUTES INVOLVED

The statutes involved are: The Act of February 18, 1931, as amended, 46 Stat. 1171, former 8 U.S.C. 156a; sections 19 and 20 of the Act of February 5, 1917, as amended, 39 Stat. 889, former 8 U.S.C. 155 and 156; and sections 2 (a) and 8 (a) and (d) of the Philippine Independence Act of March 24, 1934, as amended, 48 Stat. 456, former 48 U.S.C. 1232, 1238 and 1244. These provisions, some of which are lengthy, are set forth in the appendix, Brief, pp. 25 to 31.

STATEMENT

Petitioner was born in the Philippine Islands in 1910 (R. 19). He came to the continental United States as a national in 1930 and has never left the United States since then (R. 19). On February 12, 1951, he was convicted of an offense involving narcotics, a violation of section 2554 (a), Title 26, U.S.C. He was given a six-month sentence, which was suspended, and he was placed upon probation for three years (R. 39-40).¹

¹The comparative triviality of petitioner's offense is shown by the sentence of the court. The following letter of petitioner's counsel was included in the administrative file:

"... Mr. Rabang came into possession of the five Morphine Tartrate Syrettes very casually with absolutely no criminal intent whatsoever, and without any understanding that he was doing wrong. He held the Syrettes for approximately one year and passed them on, on the representation that the party to whom he was giving them was sick and needed some medication. The sale part was entirely immaterial and he was given only a couple of dollars at the time. The purchaser sought him out on many occasions to complete the transaction and also attempting to ascertain whether or not Rabang had any source of supply. Rabang, of course, had none and so informed the purchaser. . . . [W]hen he was taken into custody he made a full disclosure of the whole matter. . . . [I]t became apparent to the United States Attorney's office that the case was very weak and furthermore that the only possible witness to the transaction had left the country and would be unavailable for any trial. The United States Attorney's

On March 21, 1951, petitioner was arrested on a warrant charging that he was an alien who had been convicted of violation of law involving narcotics, deportable under the Act of February 18, 1931, as amended, former 8 U.S.C. 156a (R. 34, 35). After an administrative hearing at which the foregoing matters relating to his birth, his coming to the United States, his marriage to a United States citizen wife, who was dependent upon him (R. 24, 25), and his conviction, and at which he claimed United States nationality (R. 19), he was ordered deported on the warrant charge (R. 7, 33). His deportation was held in abeyance pending the adjudication of the deportability of Filipinos who entered prior to the Philippine Independence Act of March 24, 1934, in *Mangaoang v. Boyd* (C.A. 9, 1953) 205 F.2d 553, and *Barber v. Gonzales*, 347 U.S. 637.

On March 1, 1955, the Acting Regional Commissioner moved the Board of Immigration Appeals to reopen the case "with a view of terminating the proceeding or for such other action as it deems appropriate." The motion was filed "in view of the decision of the United States Supreme Court in the case of *Barber v. Gonzales* . . ." (R. 11). On April 7, 1955, the Board denied the motion on the ground that *Barber v. Gonzales* was inapplicable. The decision states:

" . . . the alien involved is a native and citizen of

office at this point had received the requested instructions to dismiss the case, but Rabang, feeling that he had done something wrong, insisted that he should not take advantage of this situation and he entered a plea of guilty in order to do what he thought would clear his record." (R. 35, 36)

There is nothing on the record to indicate why the district court was not requested to recommend against deportation. It seems likely that petitioner did not believe at the time that he was an alien subject to deportation (cf. R. 19).

the Philippine Islands, and he also came to the United States in 1930 at a time when he was a national of the United States, as did Gonzales. Here, however, the alien has been ordered deported under the Act of February 18, 1931. That Act does not set up entry as an alien as an essential element to deportability. All it requires is that the person sought to be deported be an alien and that he be, or have been, convicted for violation of any law regulating traffic in narcotics after the effective date of the enactment. On this record, the person sought to be deported was convicted 20 years after the enactment of the legislation under which he is sought to be deported, and he was an alien at the time of such conviction, having been an alien for all purposes since July 4, 1946." (R. 10)

Petitioner alleged in a petition for habeas corpus, for declaratory relief, and for review of administrative proceedings in the District Court, that he, never having voluntarily relinquished his nationality, and never having entered the United States, was not an alien subject to deportation (R. 1-5). The District Court denied his petition (R. 41-43), and the Court of Appeals affirmed (R. 46-48), on the grounds stated by the Board of Immigration Appeals in denying the Acting Regional Commissioner's motion to reconsider. Apparently neither the Board, the District Court, nor the Court of Appeals considered the relationship of sections 19 and 20 of the Act of February 5, 1917, former 8 U.S.C. 155 and 156, to the Act of February 18, 1931, former 8 U.S.C. 156a.

ARGUMENT

Summary

1. The Act of February 18, 1931 (former 8 U.S.C. 156a) provides for the deportation of aliens convicted of narcotics offenses "in the manner provided in sections 19 and 20 of the Act of February 5, 1917 (former 8 U.S.C. 155 (a) and 156). The two sections referred to each make "entry" in the sense of "an alien coming into the United States from a foreign place country" a precondition of deportability. *Barber v. Gonzales*, 347 U.S. 637. It appears to have been the intent of Congress in passing the 1931 Act to add alien narcotics violators to the classes of deportable aliens enumerated in section 19, and hence to make the general provisions of that section, and section 20, including the term "entry," applicable to the 1931 Act.

Barber decided that a Filipino who came to the United States as a national in 1930 was not deportable since he did not "enter" as that term is used in section 19 of the 1917 Immigration Act. Petitioner, a Filipino, was also a national when he arrived in the United States in 1930. He did not enter; and hence is not deportable under sections 19 and 20, which are made a part of the 1931 statute.

Even if it were to be decided that "entry" is not made a precondition to deportation by the reference to sections 19 and 20 in the 1931 Act, entry is an implied condition, since the power to expel aliens arises from the implied constitutional power to exclude and conditionally admit the subjects of foreign sovereignties, or to prescribe the conditions of their remaining in the

United States: *Ekiu v. United States*, 142 U.S. 651; *Harisiades v. Shaughnessy*, 342 U.S. 580. "Entry" expresses the relationship of the constitutional power to expel to subjects of deportation procedure. It is constitutionally necessary that before the power to expel can be exercised, the power to exclude must have existed. In this case, since petitioner came to the United States as a non-excludable national, he cannot be expelled, never having been subject to exclusion.

2. In any event petitioner is not now an alien, but a national. Congress has never expressly divested continuously resident Filipinos who owed permanent allegiance to the United States and who arrived as nationals of their status. Such an important forfeiture of status should not be implied. *Washington Pub. Co. v. Pearson*, 306 U.S. 30, 41. Especially where deportation is involved, doubt or ambiguity should be resolved against a determination of status which would result in deportability. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10.

I.

"Entry" into the United States Is a Precondition to Deportability Under the Act of February 18, 1931. Petitioner Did Not "Enter the United States" and Is Not Deportable.

This court decided in *Barber v. Gonzales*, 347 U.S. 637, that a Filipino who came to the United States in 1930, prior to the passage of the Philippine Independence Act of 1934, did not "enter" the United States as that term is used in Section 19(a) of the Immigration Act of February 5, 1917, as amended.² Gonzales was not

² 39 Stat. 889, as amended; formerly 8 U.S.C., 155(a); set forth in Appendix, pages 26 to 28.

deportable because of convictions for crimes involving moral turpitude "committed at any time after entry." The present case arises under the Act of February 18, 1931, as amended, 46 Stat. 1171, formerly 8 U.S.C. 156a. If "entry" as that term is used in the 1917 Act is a precondition to deportation under the 1931 Act, then *Barber* is directly applicable, and petitioner in this case is not deportable. It is petitioner's position that both the expressed language and the legislative history of the 1931 Act and its amendment require "entry" as a precondition of deportation in this case to the same extent as in *Barber*.

- A. The language of the Act of February 18, 1931, referring to Sections 19 and 20 of the Act of February 5, 1917, necessarily incorporates "entry into the United States" as a precondition of deportability under the 1931 Act.**

After its amendment by Sec. 21 of the Alien Registration Act of June 28, 1940, the statute here involved, 8 U.S.C. 156a, read as follows:

"Any alien (except an addict who is not a dealer in, or a peddler of, any of the narcotic drugs mentioned in this section) who, after February 18, 1931, shall be convicted for violation or conspiracy to violate any statute of the United States or of any state, territory, possession, or of the District of Columbia, taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into

custody and deported in the manner provided in sections 155 and 156 of this title."

In determining what was intended by this language of reference to these sections, 19 and 20 of the 1917 Act, each of the sections referred to will be separately considered.

**Section 19 of the Act of February 5, 1917
(Former 8 U.S.C. 155(a))**

Until the passage of the 1952 Immigration and Nationality Act, Section 19 of the 1917 Immigration Act was the basic law relative to deportation.³ Section 19 first defined twelve classes of deportable aliens: Members of excluded classes on entry; those who entered or shall be found in the United States in violation of the act; anarchists and similar classes; public charges within five years after entry; those convicted of an infamous crime, involving moral turpitude, within five years after entry; those twice convicted of such a crime at any time after entry; those connected with prostitution; those importing or attempting to import persons for immoral purposes; those excluded or deported for connection with prostitution who shall re-enter; those convicted and imprisoned for violation of section 4 of the act (forbidding importation of aliens for purposes of prostitution); those convicted or admitting conviction of a crime involving moral turpitude prior to entry; those entering without inspection. This enumeration of deportable classes is followed by language which is for the most part applicable to all classes of deportable aliens.

³ See "Hearing before a subcommittee of the Committee on the Judiciary on H.R. 5138," 76 Cong., 3rd Sess., May 17, 1940, page 25, 32.

As here pertinent, the general language of section 19 applicable to all classes provided that any alien falling within the classes described

... shall, upon warrant of the Attorney General⁴ be taken into custody and deported: *Provided*, ... *further*, That the provisions of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to the representative of the State, make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided, further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided, further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof. . . . In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final."⁵

The reference in the 1931 Act to section 19 of the

⁴The Secretary of Labor prior to June 14, 1940: Reorg. Plan No. V, 5 Fed. Reg. 2423, 54 Stat. 1238.

⁵39 Stat. 889, 890: The full text of this section is set forth in the Appendix, pages 26 to 30.

1917 Act can be understood only by the assumption that the general provisions following the description of deportable classes of aliens are intended to be applicable, where pertinent, to the 1931 Act, and that the later act is in effect an amendment to section 19, adding thereto a new class of deportable aliens: those convicted of traffic in narcotics.

The legislative history of the 1931 Act fully supports this assumption. It was introduced in 71st Congress as "A Bill (H.R. 3394) to Amend Section 19 of the Immigration Act of 1917 by providing for the deportation of an alien convicted in violation of the Harrison Narcotic Law and amendments thereto" and was passed by the House under this title. 71st Cong., 2nd Sess., Cong. Rec., 12453. The Senate, at the time of passage of this bill, likewise considered it as a bill "to amend Section 19 of the Immigration Act of 1917." 71st Cong., 3rd Sess., Cong. Rec. 4486, 4487. However, the Committee on Immigration, to which the bill was referred, possibly because the language was not strictly amendatory, corrected the title to read: "An Act to Provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics." (71st Cong., 3rd Sess., Sen. Rep. 1443). While the bill was amended both in the House and in the Senate (71st Cong., 3rd Sess., 3741, 4486), the amendments were minor and technical, and the bill was enacted into the law substantially in the form in which it was first introduced.

The 1931 Act paralleled an earlier statute, also providing for deportation of narcotics offenders convicted

under the Jones-Miller Act of February 9, 1909.⁶ This statute, the Act of May 26, 1922,⁷ amending the Jones-Miller Act, provided as follows:

" * * * (e) Any alien who at any time after his entry is convicted under subdivision (c) shall, upon the termination of the imprisonment imposed by the court upon such conviction and upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of Section 19 and 20 of the Act of February 5, 1917, entitled 'An Act to Regulate the Immigration of Aliens to and Residence in, the United States,' or provisions of law hereafter enacted, which are amendatory of, or in substitution for, said sections."

The reference to section 19 of the Immigration Act of 1917 in the Jones-Miller Act amendment of May 26, 1922, was held to adopt "the whole of the provisions relative to deportation contained in those sections," *Hampton v. Wong Ging* (C.A. 9, 1924) 299 Fed. 289; *Weedin v. Moy Fat* (C.A. 9, 1925) 8 F.2d 488; *United States v. Wing* (D.C., Nev., 1925) 6 F.2d 896, except where the particular language of the Jones-Miller Act clearly controlled the general language of the basic Immigration Act. *United States ex rel. Grimaldi v. Ebey* (C.A. 7, 1926) 12 F.2d 922; *Chung Que Fong v. Nagle* (C.A. 9, 1926) 15 F.2d 789; *United States ex rel. Spataro v. Day* (C.A. 2, 1928) 23 F.2d 1005; *Todaro v. Munster* (C.A. 10, 1933) 62 F.2d 963; *Shibata v. Tillinghast* (D.C., Mass., 1929) 31 F.2d 801.

The judicial interpretation of the words of reference

⁶ 35 Stat. 614.

⁷ 42 Stat. 596; 21 U.S.C. 175 (1940 Ed.).

to sections 19 and 20 contained in section 2(e) of the Jones-Miller Act was followed in interpreting the Act of February 18, 1931, *Dang Nam v. Bryan* (C.A. 9, 1934) 74 F.2d 379. Discussing the words of reference in the 1922 Act as compared to those of the 1931 Act, the court in the *Dang Nam* case stated:

"We do not think that this slight change in language indicates an intention to ignore the provisions of section 155 which we had theretofore held applied to such deportation. We see no reason for holding in the case of the Act of May 26, 1922 (21 USCA §175), that the words 'deported in accordance with' the provisions of section 155 with reference to the sentence and recommendation of the trial judge and for holding that such sentence and recommendation was no part of the 'manner' of deportation under the Act of February 18, 1931."

The court held that the recommendation of the trial judge against deportation, in accordance with the pertinent proviso of section 19 of the Immigration Act of 1917, was an effective bar to the deportation of an alien under the 1931 Act.⁸

Thus, according to contemporary judicial interpretation, the language of both the Jones-Miller Act amendment of 1922 and of the 1931 Act by referring to deportation "in accordance with" or "in the manner of" section 19 evidenced a Congressional intent to adopt the general language of section 19 as an integral part of the statutes referring to that section. As the Ninth Circuit Court in *Weedin v. May Fat*, 8 F.2d 488, discussing the

⁸ *Contra: United States ex rel. Magri v. Wixon* (S.D., N.Y., 1931) 53 F.2d 475.

1922 Act with reasoning equally applicable to the 1931 Act, commented at page 489:

"Section 19 contains no provision whatever concerning procedure or the manner of deportation. If it was the intention of the latter Act to adopt only the manner of deportation prescribed in the Act of 1917, there was no occasion to refer to Section 19."

Presumably Congress was aware of the interpretation which had been placed upon the language of reference to sections 19 and 20 in the Jones-Miller Act amendment of 1922 in adopting similar language referring to these sections in the 1931 Act, and was also aware of the interpretation placed on the language of reference in the 1931 Act when that act was amended without any change in the words referring to sections 19 and 20 by the Alien Registration Act of 1940⁹ (*cf. Blake v. McKim*, 103 U.S. 336, 339).

The third general proviso of section 19, immediately following the proviso relating to a court's recommendation against deportation, contains language applicable to all classes of aliens to which section 19 is applicable, in terms of "their entry into the United States," as follows:

"... the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens mentioned irrespective of the time of their entry into the United States. . . ."
(Emphasis added).

⁹After the amendment of the 1931 Act by section 21 of the Alien Registration Act (54 Stat. 673) the lower federal courts continued to interpret the words of reference as embracing the general provisions of 1917 Act to the 1931 Act. *Ex parte Robles-Rubio* (N.D., Cal., S.D., 1954) 119 F.Supp. 610. See *United States ex rel. DeLuca v. O'Rourke* (C.A. 8, 1954) 213 F.2d 759; *Ex parte Eng* (N.D., Cal., S.D., 1948) 77 F. Supp. 74.

If this, as well as the preceding proviso, which was the subject of the numerous court decisions cited, is generally applicable to the Act of February 18, 1931, then "entry" is as much a precondition to the deportability of petitioner Rabang as it was to respondent Gonzales in *Barber*.

Section 20 of the Act of February 5, 1917

(Former 8 U.S.C. 156)

Section 20 of the Immigration Act of 1917 deals exclusively with the *manner of deportation*. It is thus directly apposite to the 1931 Act, which provides for deportation "in the manner provided in sections 19 and 20." Each part of section 20 makes *entry*, as defined in *Barber v. Gonzales*, 347 U.S. 637, unmistakably a precondition to deportation. The first sentence of the section, in three clauses, relates to the places to which deportation may be effected:

"That the deportation of aliens provided for in this Act, shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refused to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior

to entering the country from which they entered the United States."

The words "entered the United States" are used in three separate places in this sentence.

The second and third sentences of the section embrace all classes of aliens to whom the section is applicable:

"If deportation proceedings are instituted at any time *within five years after the entry of alien*, such deportation . . . shall be at the expense of the contractor . . ." etc.

* * * * *

"If deportation proceedings are instituted later than five years *after the entry of the alien*, or, if the deportation is made by reason of causes arising *subsequent to entry*, the cost thereof shall be payable from the appropriation for the enforcement of this Act. . . ." (Emphasis added)

These sentences embrace all of the classes of aliens to whom the section is applicable: those as to whom "deportation proceedings are instituted at any time within five years after entry" and those as to whom "deportation proceedings are instituted later than five years after entry." No sentence of the section is applicable to any other class of aliens. All aliens to whom the section applies are embraced in a single class: Aliens as to whom "*deportation proceedings are instituted . . . after entry.*"

Section 20, even more clearly than section 19, makes plain that Filipinos who commenced their residence in the United States prior to 1934, and who never "entered the United States," but who came as nationals,

cannot be deported "in the manner provided in sections 19 and 20." Thus, "entry" is as much a precondition to deportation under the 1931 Act as it is under section 19 of the 1917 Act and for precisely the same reason. The general portions of section 19, and all of the provisions of section 20, are parts of the 1931 Act without which that Act would be unenforceable. Entry is a precondition of deportation both in sections 19 and 20 of 1917 Act, and is thus a precondition under the Act of February 18, 1931, as amended.

B. "Entry into the United States" is a necessarily implied precondition to deportability regardless of whether the term "entry" is used in the applicable deportation statute.

If the court decides that the express words of reference to sections 19 and 20 of the Immigration Act of 1917 import into the 1931 Act the term "entry," it need go no further. But even if the court should decide that the 1931 Act does not so do, "entry" is a necessarily implied precondition.

"Entry" as defined in *Barber v. Gonzales*, 347 U.S. 637, *Delgadillo v. Carmichael*, 332 U.S. 388, *Carmichael v. Delaney* (C.A. 9, 1948) 170 F.2d 239, *Del Guercio v. Gabot* (C.A. 9, 1947) 161 F.2d 559, and *DiPasquale v. Karnuth* (C.A. 2, 1947) 158 F.2d 878, is more than a term of art used in a statute. It expresses the relationship of an individual, subject to expulsion, to the source of power to deport which derives from the Constitution. The implied power to deport is related to express grants of power from the Constitution to branches of the United States govern-

ment through the term "entry" — the coming of an alien from a foreign place or country into the United States. "Entry" relates this implied power to deport to express constitutional provisions relating to the conduct of foreign affairs, and to the regulation of commerce with foreign nations, within the limitation of the Tenth Amendment. The power of Congress to legislate with respect to immigration, exclusion and expulsion, and the power of the executive to exclude and expel, must be implied from express provisions of Articles I and II of the Constitution if the Tenth Amendment is to be given effect.

It has long been held that such power is implied from the express power of Congress "to regulate commerce with foreign nations," from the treaty-making power of the executive, and from the sovereign power of the United States government to conduct foreign relations. *Ekiu v. United States*, 142 U.S. 651, 659. Subjects of foreign nations coming to the United States may be excluded or admitted conditionally, and after gaining entry may be expelled. The right to expel or deport aliens "rests upon the same grounds . . . as the right to prohibit and prevent their entrance into the country." *Fong Yue Ting v. United States*, 149 U.S. 698, 707. In the same case at page 713 the court stated: "The power to exclude aliens and the power to expel them rest upon one foundation, are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power."

Conversely it would seem that, absent the power to exclude, the foundation, source and reason of the power

to expel would be gone. In other words, the power to expel is derived from express grants of power to the legislative and executive branches of the government to conduct foreign affairs in Articles I and II of the Constitution.

While it may be appropriate to express any power granted to the executive and legislative branches of the government by the Constitution in terms of "sovereignty," the statement that the power to deport derives from the "sovereignty" of the United States in its conduct of foreign affairs, tends to obscure rather than clarify the constitutional source of the power. Such broad assertions with respect to the existence of unexpressed, extra-constitutional sovereign power have troubled some members of the court from the earliest deportation cases to some of the latest.¹⁰ In any event, ample power to deport may be implied from express delegation of power to the Congress and the executive under Articles I and II of the Constitution and still give the limitation of the Tenth Amendment full force.

It is not the purpose of petitioner to consider the "whole volume" of judicial history which sustains the power to expel aliens who could have been excluded in the first instance. *Cf. Galvan v. Press*, 347 U.S. 522. But an entirely different problem is presented in this case where petitioner was a national of the United States by birth, and came to, and remained in, the United States as a national. His attempted deportation has nothing to do with the regulation of commerce with for-

¹⁰See dissenting opinion of Mr. Justice Brewer in *Fong Yue Ting v. United States*, 149 U.S. 698, 732, and of Mr. Justice Douglas in *Harisiades v. United States*, 342 U.S. 580, 598.

eign nations, nor the conduct of foreign affairs. His coming to the United States was a domestic affair. Neither the power to exclude him in the first instance, nor to deport at the present time, can be implied from express grants of power to the Congress or the executive.

There is no instance known to petitioner in which Congress has shown disposition to provide for the banishment or expulsion of persons who never "entered" the United States, and who thus were never subject to the power of exclusion. Congressional views as to the constitutional source of power to expel and exclude aliens have paralleled those of this court:

"The power of Congress to control immigration stems from the sovereign authority of the United States as a nation and from the constitutional power of Congress to regulate commerce with foreign nations. Every sovereign nation has power, inherent in sovereignty and essential to self preservation, to forbid entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. Congress may exclude aliens altogether or prescribe terms and conditions upon which they may come into or remain in this country." House Rep. 1513, 82nd Cong., 2nd Sess., page 5.

There is nothing known to petitioner that indicates that the Congress has ever considered that it has the power to expel except as a concomitant of the power to exclude, deriving from the same source.¹¹

¹¹ Although the Immigration and Nationality Act of June 28, 1952, as amended by the Act of September 3, 1954, 68 Stat. 1146, 8 U.S.C.A. § 1481 (a) (8) and (9), provides for divestiture of nationality by reason of conviction of certain offenses, including desertion, treason,

Since the power to expel arises out of the power to exclude initially, it is difficult to see how such power could exist independent of the power to exclude. It is believed that this constitutes a limitation on the power to deport which prevents lawful expulsion of persons other than those who came into the United States from a foreign country.¹²

Whether or not Congress has the power to divest native-born citizens or nationals of their nationality against their will, constitutional authority for the power to expel in such cases is not believed to exist. "Entry" expresses the relationship between alienage and coming into the United States from a foreign country which is the constitutional precondition to deportation. It is believed to be a necessarily implied condition of all statutes providing for the expulsion of aliens. While it seems certain that Congress expressly included entry as a precondition to deportation under the Act of February 18, 1931, absent such express provision, entry would be an implied constitutional limitation upon the power to deport under that or any other statute.

II.

Petitioner Is at the Present Time a National of the United States and Hence Not Deportable as an Alien.

Petitioner, as one born in the Philippines after the

¹²*Eichenlaub v. Shaughnessy*, 338 U.S. 521, is not an exception. After *Eichenlaub* was denaturalized he stood on the same footing as any other alien who had come to the United States from a foreign country at the time of his initial entry.

and violation and conspiracy to violate the Smith Act, there appears to be no legislation authorizing expulsion of native born citizens or nationals so convicted.

acquisition of those islands by the United States, was a national by birth. He came to, and continued his residence in the United States as a national. He has claimed American nationality ever since (R. 19).

Expatriation is a voluntary act by which an individual divests himself of his nationality, whether originally acquired by birth or naturalization. *Perkins v. Elg*, 307 U.S. 325, 334. No such abandonment or renunciation has taken place in this case. On the contrary, petitioner has clung to his United States nationality, maintaining his residence in the United States, and continuing to assert his claim of nationality.

Nationality acquired by birth is closely analogous to citizenship. It is not analogous to alienage, whose peculiar characteristic is birth outside of the jurisdiction of the United States. *Low Wah Suey v. Backus*, 225 U.S. 460, 463. Petitioner was born under the jurisdiction of the United States, one of the two indicia of citizenship under the Fourteenth Amendment, and within United States territory. By reason of his birth within United States territory, he owed permanent allegiance to the United States at birth. *Gonzales v. Williams*, 192 U.S. 1; *Fourteen Diamond Rings v. United States*, 183 U.S. 176, 179; *Toyota v. United States*, 268 U.S. 402, 410.

The definition of "national" of the Nationality Act of 1940,¹³ was applicable to petition. National is there defined as:

"... (1) A citizen of the United States, or (2) a person who though not a citizen of the United

¹³54 Stat. 1137, former 8 U.S.C. 501 (b).

States owes permanent allegiance to the United States. It does not include an alien."

The same definition is continued in the Immigration and Nationality Act of 1952, section 101 (a) (22), 8 U.S.C.A. 1101 (a) (22), which defines an alien as "Any person not a citizen or national of the United States" (Section 101 (a) (3); 8 U.S.C.A. 1101 (a) (3)).

With respect to citizenship, which derives from the Constitution, "... no act or omission of Congress ... can affect citizenship acquired as a birthright, by virtue of the Constitution itself, without any aid of legislation. The Fourteenth Amendment ... has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution itself to constitute a sufficient and complete right to citizenship." *United States v. Wong Kim Ark*, 169 U.S. 649, 703.

While nationality, acquired at birth by virtue of treaty and statute may rest upon a somewhat different footing, the close relationship between citizenship and nationality, and their substantial divergence from the status of alienage, indicates that divestiture of nationality is not to be inferred from doubtful or uncertain language, but should rest upon the most explicit expression of legislative intent. Just as the right of citizenship should not be "destroyed by an ambiguity," *Perkins v. Elg*, 307 U.S. 325, 337, neither should nationality be taken away by inference or assumption.

While the court below has stated in several cases¹⁴ that Filipinos born in the Philippine Islands, and com-

¹⁴*Cabebe v. Atcheson* (C.A. 9, 1950) 183 F.2d 795; *Mangaoang v. Boyd* (1953) 205 F.2d 553; *Gonzales v. Barber* (1953) 207 F.2d 393; *Resurreccion-Talavera v. Barber* (C.A. 9, 1956) 231 F.2d 534, and this case below.

ing to the United States prior to the passage of the Independence Act of 1934, lost their United States nationality by operation of law on July 4, 1946, admittedly such conclusion rests upon an inference. As stated in *Cabebe v. Acheson*, 183 F.2d 795, at page 801:

"The question is not directly answered (but, as we think, it was inferentially answered) by the Philippine Independence Act of 1934, the presidential proclamation of Philippine independence or the Treaty of July 4, 1946, with the Republic of the Philippines. While there is no special reference of inclusion or exclusion in any of these acts to Filipinos who were no longer residing in the Islands on the date of their independence, it was, from the ceding from Spain, contemplated and finally accomplished that the United States would surrender all 'sovereignty over the territory and the people of the Philippines.' In the light of the undeviating non-imperialistic policy of the government of the United States, it seems to us that the expression 'people of the Philippines' is all-inclusive excepting only those who have by their own volition taken authorized steps to separate themselves from a national relation to the government of the Philippines. All of the Congressional acts are consistent with this interpretation."

But divestiture of the cherished status of nationality should not be inferred from the failure of carefully drawn acts and proclamations to make reference to the substantial, though relatively small, number of Filipinos who came here as United States nationals, have resided in the United States for twenty-three years or more, and have become a part of the national life of this country. Forfeitures should never be presumed, but should rest only upon the most clearly expressed intent.

Washington Publishing Co. v. Pearson, 306 U.S. 30, 41; *United States v. One Ford Coach*, 307 U.S. 219, 326; *Knickerbocker Life Ins. Co. v. Norton*, 96 U.S. 234; *Bennett v. Hunter*, 76 U.S. 326.

Particularly where loss of the status of nationality may result in deportation, construction of the Independence Act should be resolved in favor of maintenance of the status which would prevent expulsion. As this court said in *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10:

"We resolve the doubts in favor of that construction because deportation is a drastic measure and at times equivalent to banishment or exile. . . . It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. . . . [S]ince the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used."

In this case not only deportation, and possible permanent separation from loved ones is at stake, but, indeed, the birthright of American nationality.

CONCLUSION

For the foregoing reasons the decision of the court below should be reversed, the order of deportation set aside, and petitioner should be released from further custody.

Respectfully submitted,

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APPENDIX

1.

Act of Feb. 18, 1931, 46 Stat. 1171:

AN ACT to Provide for the Deportation of Aliens Convicted and Sentenced for Violation of Any Law Regulating Traffic in Narcotics.

Be It Enacted by the Senate and House of Representatives in Congress Assembled, That any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after the enactment of this Act, shall be convicted and sentenced for violation or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

Act of June 28, 1940, 54 Stat. 673:

SEC. 21. The Act entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics," approved February 18, 1931, is amended—

- (1) By striking out the words "and sentenced";
- (2) By inserting after the words "any statute of the United States" the following "or of any state, territory, possession, or of the District of Columbia;" and
- (3) By inserting after the word "heroin" a comma and the word "marihuana."

Act of Feb. 5, 1917, 39 Stat. 889-891:

SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import

or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the Court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing or passing sentence or within thirty days thereafter, due notice having first been given to repre-

representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof; *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

SEC. 20. That the deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then

to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the appropriation for the enforcement of this Act. A failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Labor to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section eighteen of this Act: *Provided*, That when in the opinion of the Secretary of Labor the mental or physical condition of such alien is such as to require personal care and attendance, the said Secretary shall when necessary employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of de-

porting the accompanied alien is defrayed. Pending the final disposal of the case of any alien so taken into custody, he may be released under a bond in the penalty of not less than \$500 with security approved by the Secretary of Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States.

The Philippine Independence Act of March 24, 1934, 48 Stat. 456, former 48 U.S.C. 1232, 1238 and 1244.

Sec. 2(a). The constitution formulated and drafted shall be Republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

- (1) All citizens of the Philippine Islands shall owe allegiance to the United States. . . .

Sec. 8(a). Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in Section 17.

- (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States, relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. . . .

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States . . . shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

* * *

Act of August 7, 1939, 53 Stat. 1230, former 48 U.S.C. 1238, * * * Sec. 2—Sec. 8 of the said Act of March 21, 1934, is hereby amended by adding thereto a new subsection as follows:

- (d) Pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands, except as otherwise provided by this Act, citizens and corporations of the Philippines shall enjoy in the United States all of the rights and privileges which they respectively shall have enjoyed therein under the laws of the United States in force at the time of the inauguration of the Government of the Commonwealth of the Philippine Islands.



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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, PETITIONER

v.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND
NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 19-21) is reported at 234 F. 2d 904.

JURISDICTION

The judgment of the Court of Appeals was entered June 14, 1956 (R. 113). The petition for a writ of certiorari was filed September 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether a Filipino who has resided in the United States since he entered as a national in 1930 could

properly be treated as an alien after Philippine independence in 1946.

2. Whether, under a statute providing for the deportation of "any alien" thereafter convicted of narcotics violations, petitioner could be deported on the basis of a 1951 narcotics violation although his entry into the United States had been as a national.

STATUTES INVOLVED

The Act of February 18, 1931, 46 Stat. 1171, as amended, by the Act of June 28, 1940, 54 Stat. 673, 8 U. S. C. (1946 ed.) 156a provided:

Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after February 18, 1931, shall be convicted for violation of or conspiracy to violate any statute of the United States or of any State, Territory, possession, or of the District of Columbia taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, provided, in pertinent part:

* * * * *

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Petitioner, who was born in the Philippine Islands in 1910, entered the United States in 1930 and has since resided in this country (R. 33). On February 12, 1951, he was convicted of selling and giving away narcotics in violation of 26 U. S. C. 2554 (a) and was placed on three years' probation, with a six month sentence suspended (R. 56-60). On the basis of this conviction, he was ordered deported under the provisions of the Act of February 18, 1931, as amended, *supra*, p. 2 (R. 26-28). After the decision of this Court in *Barber v. Gonzales*, 347 U. S. 637, holding that entry as a national was not an "entry" for the purposes of the immigration laws, the acting regional commissioner requested the Board of Immigration Appeals to reconsider the case (R. 21-22). The Board declined to reopen the proceedings, holding that under the statute pursuant to which petitioner was ordered deported, entry as an alien was not essential to deportability, the statute requiring only that the person to be deported be an alien who had been convicted for violation of any law regulating traffic in narcotics (R. 17-20).

Petitioner thereafter instituted this action attacking the deportation order in the United States Dis-

trict Court for the Western District of Washington, alleging that (1) he was not an alien, and (2) since he had made no entry into the United States in the technical sense that entry is used in the immigration law, he was not subject to deportation (R. 4-10). The district court dismissed the petition (R. 98-102), and the court of appeals affirmed (R. 113).

ARGUMENT

1. The contention that Filipinos who were legal residents of the United States at the time of Philippine independence in 1946 did not lose their status as United States nationals, and did not become aliens, despite the clear wording of Section 14 of the Independence Act (*supra*, p. 2),¹ has repeatedly been rejected by the court below. *Resurreccion-Talavera v. Barber*, 231 F. 2d 524; *Mangaoang v. Boyd*, 205 F. 2d 553, certiorari denied, 346 U. S. 876; *Gonzales v. Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637; *Cabebe v. Acheson*, 183 F. 2d 795.² While this Court did not reach the point in its decision in *Barber v. Gonzales*, 347 U. S. 637, the intent and power of Congress to provide that, after Philippine independence, Philippine nationals should be aliens in relation to the United States, was extensively discussed in the reply brief for petitioner in that case.

¹ Since the period from 1934 to 1946 has no relevancy to the problems of this case, it is unnecessary to consider the effect of Section 8 (a) of the Philippine Independence Act which declared that, even before full independence, citizens of the Islands who were not citizens of the United States, should be treated as aliens for the purposes of the immigration laws.

² The question does not appear to have arisen in other circuits.

(No. 431, O. T. 1953), to which we respectfully refer the Court.

2. The statute under which petitioner was ordered deported, former 8 U. S. C. 156 (a) (*supra*, p. 2), requires the deportation of "any alien", except an addict who is not a peddler, "who, after February 18, 1931, shall be convicted" of violations of the narcotics laws. Unlike the statute involved in *Barber v. Gonzales*, 347 U. S. 637, the conditions which give rise to deportability are not related to the "entry" of the alien, but to the effective date of the statute. Petitioner was convicted of selling narcotics in 1951, after Philippine independence, when he was an alien, and at a time when the particular offense involved had for many years been grounds for deportation. His deportation, was, therefore, required under the statute. See *Eichenlaub v. Shaughnessy*, 338 U. S. 521, where the Act of May 10, 1920, 41 Stat. 593, which provided for the deportation of aliens convicted of espionage after 1914, was held to render deportable a former naturalized citizen whose citizenship had not been revoked, and who therefore did not have the status of an alien at the time the offense was committed.

Petitioner attempts to make "entry" an implied condition of deportability by an involved process of reasoning to the effect that, since the Act of 1931 provides for deportation "in manner provided in sections 19 and 20 of the Act of February 5, 1917," the general provisions of Section 19 apply to his deportation, including the provision that Section 19 "with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned

irrespective of the time of their entry into the United States" (Pet. 4-5). Assuming his premise, the clause on which he relies making deportation applicable "irrespective of the time" of entry is certainly not the same as "after entry." It therefore does not serve to make entry a condition of deportability. As noted, the significant time under the Act of 1931 is "after February 18, 1931". And *Eichenlaub v. Shaughnessy*, 338 U. S. 521, where a denaturalized citizen was held deportable, is a sufficient answer to petitioner's argument that prior "entry" should be considered a requisite for deportation on the basis that it is essential to the power to deport.

The reports on the bill which became the Act of 1931 reveal merely a purpose to deport all aliens who thereafter engaged in the narcotics traffic (H. Rep. No. 1373, 71st Cong., 2d Sess.; S. Rep. No. 1443, 71st Cong., 3d Sess.), with an extension of grace suggested on the floor of the House for addicts who were not peddlers (72 Cong. Rec. 10324, 12366). There is nothing in this history to show that Congress regarded as significant any fact other than the alienage which was necessary to support deportation, and the fact of conviction for trading in narcotics. Petitioner, as an alien convicted of trading in narcotics, falls within the plain language and clear intendment of the statute.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1956.

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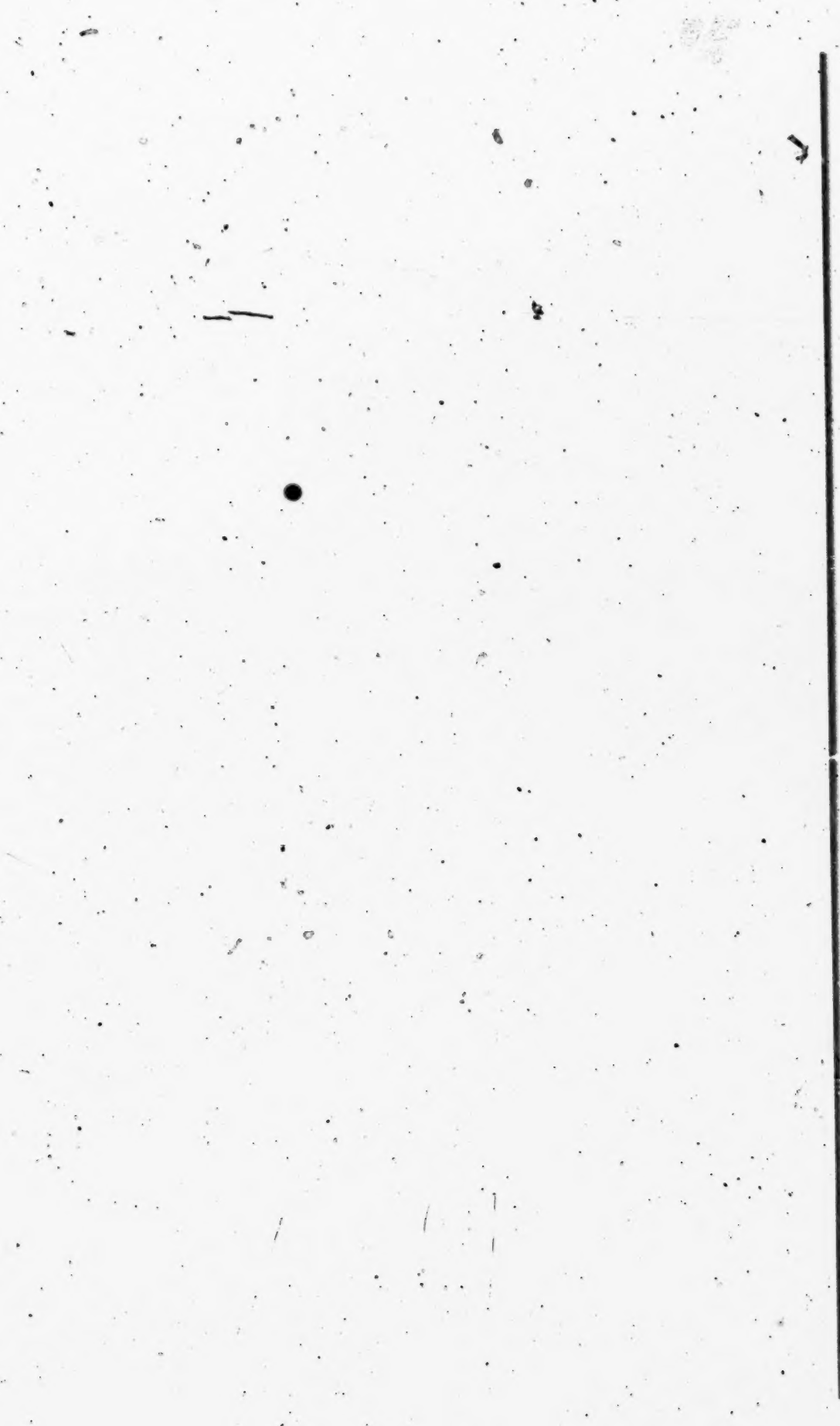
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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 403

HENRY RAGONTON RABANG, PETITIONER

v.

JOHN P. BOYD, DISTRICT DIRECTOR, IMMIGRATION AND
NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals (R. 46-48) is reported at 234 F. 2d 904.

JURISDICTION

The judgment of the Court of Appeals was entered June 14, 1956 (R. 49). The petition for a writ of certiorari was filed September 10, 1956, and was granted on November 13, 1956 (R. 49; 352 U. S. 906). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner, a Filipino who entered the United States in 1930 as a national, could be deported,

under a 1931 statute providing for the deportation of "any alien" thereafter convicted of a narcotics violation, on the basis of such a conviction in 1951, subsequent to Philippine independence.

2. Whether a Filipino who has resided in the United States since he entered as a national in 1930 could validly be treated as an alien after Philippine independence in 1946.

STATUTES INVOLVED

The Act of February 18, 1931, 46 Stat. 1171, as amended by the Act of June 28, 1940, 54 Stat. 673, 8 U. S. C. (1946 ed.) 156a, provided:

Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this Act) who, after February 18, 1931, shall be convicted for violation of or conspiracy to violate any statute of the United States or of any State, Territory, possession, or of the District of Columbia taxing, prohibiting, or regulating the manufacture, production compounding, transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt, derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in the manner provided in sections 19 and 20 of the Act of February 5, 1917, entitled "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States."

Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, c. 29, as amended (8 U. S. C. (1946 ed.) 155 (a)); provided:

At any time within five years after entry, any alien who at the time of entry was a member of one of more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter [after May 1, 1917] sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place

of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner of Immigration and Naturalization; or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Attorney General, be taken into custody and deported: * * * *Provided.* * * * That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sen-

tence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Attorney General that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Attorney General shall be final.

Section 20 of the Immigration Act of February 5, 1917, 39 Stat. 890, c. 29, as amended (8 U. S. C. (1946 ed.) 156), provided in pertinent part:

The deportation of aliens provided for in this Act shall, at the option of the Attorney General, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such em-

barkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the country from which they entered the United States. * * * If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States, or, if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation line by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the

appropriation for the enforcement of the Act. * * *

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c, 84, provided in pertinent part:

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

STATEMENT

Petitioner, who was born in the Philippine Islands in 1910, entered the United States as a national in 1930 and has since resided in this country (R. 19-20). Subsequent to Philippine independence, he did not

become a citizen of the United States. (R. 6.) On February 12, 1951, he was convicted of selling and giving away narcotics in violation of 26 U. S. C. 2554 (a). Six months sentence was imposed and suspended and he was placed on three years' probation (R. 38-40). On the basis of this conviction, he was ordered deported under the provisions of the Act of February 18, 1931, as amended, *supra*, p. 2 (R. 14-15).

Subsequently, in *Barber v. Gonzales*, 347 U. S. 637, this Court, dealing with a deportation under another act, *i. e.*, Section 19 (a) of the Immigration Act of 1917 (*supra*, pp. 2-5), held that entry from a foreign port or place was there essential to deportability and that Gonzales was not deportable since he entered the United States prior to the Philippine Independence Act of 1934 when the Philippine Islands were not a foreign place. The clause under which Gonzales had been ordered deported required deportation if an alien had been sentenced more than once for crimes involving moral turpitude "committed at any time after entry". On the basis of this decision, the acting regional commissioner of the Immigration and Naturalization Service requested the Board of Immigration Appeals to reconsider this case (R. 11-12). The Board declined to reopen the proceedings, distinguishing the statute pursuant to which petitioner was ordered deported from the statute involved in the *Gonzales* case, since the instant statute made no mention of "entry", and required only that the person to be deported be an alien convicted after February 18, 1931 (R. 8-10).

Petitioner thereafter instituted this action in the United States District Court for the Western District of Washington, attacking the deportation order on the grounds that (1) since he had made no entry into the United States, in the technical sense that entry is used in the immigration law, he was not subject to deportation, and (2) since he was a national of the United States residing in the United States at the time of Philippine Independence, he could not constitutionally be deprived of his United States nationality (R. 1-5).

The District Court dismissed the petition (R. 41-44), and the Court of Appeals affirmed (R. 46-49).

SUMMARY OF ARGUMENT

I

The Act of February 18, 1931 (8 U. S. C. (1946 ed.) 156a), *supra*, p. 2), provided for the deportation of an alien convicted of violating a narcotics law after the effective date of the statute. Petitioner was convicted of a narcotics violation in 1951 at a time when he was an alien, *i. e.*, a citizen of the Philippine Islands. His deportation was therefore required by the terms of the statute.

Entry as an alien is not, in terms, a prerequisite to deportability under the 1931 Act. The Act, which nowhere uses the term "entry," directs that deportation be had "in the manner provided in sections 19 and 20" of the Immigration Act of 1917 (emphasis added). Petitioner seizes upon this reference to the 1917 Act which, in certain limited respects, does refer to "entry," in an attempt to make entry into the

United States as an alien a condition precedent to deportability under the 1931 Act. In *Barber v. Gonzales*, 347 U. S. 637, this Court dealt with a direct application of Section 19 (a) of the Immigration Act of 1917, rather than the 1931 Act which incorporates only the "manner" of deportation under the 1917 Act. The holding in *Gonzales* related only to an attempt to deport under the specific provision of Section 19 (a) that an alien should be deported if sentenced for certain crimes "committed at any time after entry," and this Court decided only that entry, *where required as a condition of deportability*, must be entry from a foreign country rather than from the Philippine Islands in their status prior to independence. Petitioner, however, seeks to incorporate "entry," as construed in *Gonzales*, into the 1931 Act by reference to Section 20 and to another clause in Section 19 which uses the word "entry" in a context different from that in which it is used in Section 19 (a). These contentions have no merit.

A. With respect to Section 19 of the 1917 Act, petitioner relies on the proviso which states that "this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States" (*supra*, p. 5), arguing that this clause is encompassed in the "manner" of deportation referred to by the 1931 Act and means there must have been an "entry" within the terms of the latter Act. But this contention is foreclosed by *Bugajewitz v. Adams*, 228 U. S. 585, in which this Court held that a statute providing for deportation "in the manner pro-

vided" in another statute cannot be controlled by an express limitation in the incorporated statute and that the reference to "manner" relates only to the procedure for securing deportation. Section 19 of the 1917 Act provides that the variously described aliens "shall, upon the warrant of the Attorney General, be taken into custody and deported" and that, where another statute designates the place to which they shall be deported, aliens "shall be deported to the place specified in such other law." This is the *manner* of deportation referred to in the 1931 Act.

B. Even assuming petitioner's premise that the proviso to Section 19 does involve the "manner" of deportation, it is not incorporated by reference into the 1931 Act. The provision for the deportation of aliens "with the exceptions hereinbefore noted * * * irrespective of the time of their entry" concerns only those aliens described in the prior clauses of Section 19 whose deportability is not contingent upon a time limitation. The "exceptions," of course, are the prior clauses which specifically include words of time. *Costanzo v. Tillinghast*, 287 U. S. 341, 344-345. The Act of 1931 is governed by its own time-limitation clause—*i. e.*, any time "after February 18, 1931." Therefore, the phrase in Section 19, "irrespective of the time of their entry," would, in any event, be inapplicable and "entry" could not be read into the 1931 Act by this means.

C. Nor does reference in the 1931 Act to the manner of deportation in Section 20 of the 1917 Act make "entry" a condition precedent to deportability. Section 20 deals only with the ports to which an

alien can be deported and the details relative to expense of deportation. It imposes no limitation on deportability. When any variant of the word "enter" is used therein, it is used in a different context than in Section 19, which enumerates *causes* for deportation and not the actual *manner* or mechanical *means* of securing deportation. However, as observed *supra*, even if Section 20 were considered as imposing a limitation on deportability by virtue of the mere fact that the word "entered" is used therein, we believe petitioner's argument here is also foreclosed by *Bugajewitz v. Adams*, 228 U. S. 585, *supra*. Since the 1931 Act referred to deportation "in the manner provided" in Section 20, it cannot be controlled by other limitations in Section 20 directed, not to "manner," but to substantive bases of deportation.

Moreover, Congress used the word "entry" throughout Section 20 in its common, ordinary sense of "coming into" a place, rather than in the limited sense of "coming into the United States from some foreign port or place," which was the definition given the word "entry" as used in Section 19 (a) of the 1917 Act by *Barber v. Gonzales*, 347 U. S. 637. In Section 20, Congress referred to aliens entering "foreign contiguous territory from the United States" and to "entering the country from which they entered the United States" (*supra*, p. 6). "Entry" obviously could not mean "coming into the United States from some foreign port or place" in the phrase of Section 20 referring to entry "from the United

States." Thus, "entry" must have been used in its common, everyday meaning in Section 20 for there is no indication that it was not to be accorded the same meaning throughout that section. It is therefore submitted that the construction placed by the *Gonzales* case upon the word "entry", as used in Section 19 (a), cannot be extended to cover the meaning of the word "entry" as used in Section 20.

D. The legislative history of the 1931 Act reveals that Congress required only the conviction of an alien for a narcotics offense after February 18, 1931 (the effective date of the statute) as a requisite for deportation. H. Rep. No. 1373, 71st Cong., 2nd Sess.; S. Rep. No. 1443, 71st Cong., 3rd Sess.; *Ow Tai Jung v. Haff*, 89 F. 2d 329, 331 (C. A. 9).

E. Contrary to petitioner's contention (Pet. Br. 16-20), entry as an alien is not a condition precedent to deportability in the absence of statutory provision. The power to deport, like the power to exclude, is an attribute of sovereignty which the United States possesses in its capacity as a sovereign nation. *Harisiades v. Shaughnessy*, 342 U. S. 580, 587-588; *Carlson v. Landon*, 342 U. S. 524, 534. An alien has no constitutional right to remain here. Therefore, aliens found presently undesirable may be deported even though the acts which give rise to deportation were not grounds for exclusion at the time of entry or grounds for deportation at the time of commission. The *ex post facto* limitation in the federal constitution does not apply to deportation proceedings. *Marcello v. Bonds*, 349 U. S. 302, 314; *Galvan v. Press*, 347 U. S. 522, 531; *Harisiades v. Shaughnessy*, 342

U. S. 580, 595. The power to deport an undesirable alien depends upon alienage at the time of deportation and not upon prior "excludability" or upon prior "entry". *Eichenlaub v. Shaughnessy*, 338 U. S. 521.

II

A Filipino citizen who has continuously resided in this country since 1930, when he entered as a non-citizen national of the United States, is validly deportable as an alien. Such a person's status changed from that of a national of the United States to that of an alien when Philippine independence was proclaimed in 1946. The Philippine Independence Act of March 24, 1934, 48 Stat. 456, 464 (*supra*, p. 7); Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 F. R. 7517.

A. The Philippine Islands were ceded to the United States in 1898 by the Treaty of Paris, which provided that "the civil rights and political status of the native inhabitants * * * shall be determined by Congress" (30 Stat. 1754). Although Congress accorded the inhabitants of the Islands the protection of the United States (32 Stat. 691, 692; 39 Stat. 545, 546), it never declared them to be citizens of the United States as it has in the case of inhabitants of Puerto Rico (39 Stat. 951, 953). Inhabitants of the Islands born there subsequent to its cession to the United States therefore never acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Indeed, except for a limited class, they were racially ineligible for citizenship until independence was achieved in 1946. 60 Stat. 416.

Being entitled to the full protection of the Government of the United States made Filipinos "nationals" of the United States, but there is no basis for petitioner's suggestion (Pet. Br. 22) that the incidents and permanence of non-citizen nationality are to be equated to those of citizenship. There is a broad distinction between a "national" and a "citizen." The term "nationality" has reference to the position of a person from the standpoint of international law. Every person permanently attached to a state is a "national" of that state, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and the laws of the state. "Nationality" does not necessarily involve the right or privilege of participating in civil or political functions and is a more inclusive term than citizenship.

A non-citizen national has no constitutionally protected right to enter and remain in the continental United States. That right is appurtenant only to citizenship, and a national therefore has no more constitutional right to enter and remain here than an alien. Thus, even if petitioner were correct in his contention (Pet. Br. 21) that his status as a non-citizen national could not be terminated except by his consent or voluntary act, it would not follow that, as a national, he must be permitted to remain in the United States.

Moreover, it is clear that petitioner's status as a noncitizen national was subject to modification or termination by Congress. If he could not lose the status of a non-citizen national except by a voluntary

act of renunciation or expatriation, although he had become a citizen of the Republic of the Philippines, an independent foreign state, he would enjoy dual nationality. Congress has exercised its plenary power to prescribe the status of the inhabitants of territory not incorporated into the United States and, indeed of citizens, to eliminate just such problems as dual nationality. See, e. g., *Kawakita v. United States*, 343 U. S. 717; *Mackenzie v. Hare*, 239 U. S. 299; *Savorgnan v. United States*, 338 U. S. 491.

Nor is petitioner's position aided by virtue of the fact that, as a national, he owed "permanent allegiance" to the United States (Pet. Br. 21-22). "Permanent allegiance" does not mean an unbreakable bond, but merely distinguishes the unqualified allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States v. Wong Kim Ark*, 169 U. S. 649, 657; *Carlisle v. United States*, 16 Wall. 147, 154.

B. It is not necessary to decide here what petitioner's right as a non-citizen national would be if the Philippine Island had remained under the control of the United States indefinitely. The United States of course had power to provide for Philippine independence, and, incident to that power, Congress could change the status of non-citizen Filipino nationals of the United States residing both in the Philippines and in this country. *Hooven & Allison Co. v. Evatt*,

324 U. S. 652, 675-678; see also *Cincinnati Soap Co. v. United States*, 301 U. S. 308, 319-320, 322-324.

The question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless is not involved here. Congress, by the Act of July 2, 1946 (60 Stat. 416), made "Filipino persons" eligible for naturalization as American citizens, and thereby in effect provided, simultaneously with petitioner's loss of his status as a non-citizen national, that persons in his position could remain citizens of the Republic of the Philippines or become citizens of the United States.

C: Sections 8 (a) and 14 of the Philippine Independence Act of 1934 made citizens of the Philippine Islands subject to deportation for causes arising after May 1, 1934, regardless of when they came to this country. They are to be treated as aliens for purposes of the immigration laws, and no statutory exception was made for Filipinos residing in the United States. Section 8 (a) provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." Section 14 provided that, upon complete independence of the Philippines, "the immigration laws of the United States * * * shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries."

Section 8 (a) was headed "Relations with the United States Pending Complete Independence," and

was therefore in effect from 1934 until 1946, when complete independence was attained. "Since petitioner was convicted in 1951, Section 8 (a) has no direct relevancy to the problems of this case, but it does give added weight to the legislative intent behind Section 14 of the Act. If a Filipino national was deportable as an alien from 1934 to 1946 under Section 8 (a)—and the legislative history and contemporaneous interpretation of Section 8 (a) support this conclusion—he obviously did not cease to be so deportable when the Republic of the Philippines became an independent nation in 1946.

However, any doubts as to the effect of the Philippine Independence Act on Filipinos residing in the United States is resolved by Section 14 of the Act, which is controlling here and which explicitly applies to "persons who were born in the Philippine Islands." In 1946, petitioner clearly ceased to be a national of the United States and became an alien for all purposes.

ARGUMENT

I. Entry as an alien is not a condition precedent to deportability for a narcotics conviction under the Act of February 18, 1931

The Act of February 18, 1931 (*supra*, p. 2) provided that an alien convicted of violating a narcotics law after the effective date of the statute "shall be taken into custody and deported in the manner provided in sections 19 and 20" of the Immigration Act of 1917 (emphasis added). The word "entry" did not appear in the statute. Petitioner was ordered deported for a narcotics violation committed in 1951;

after the effective date of the statute and at a time when he was an alien. Our position is that his deportation was therefore required by the statute regardless of his status at the time he came to the continental United States.

A. The reference in the 1931 Act to the "manner" of deportation in Section 19 of the 1917 Immigration Act did not make entry as an alien a condition precedent to deportability for a narcotics conviction after 1931.

Petitioner attempts to make "entry" a condition precedent to deportability under the 1931 Act because of the reference therein to deportation "in the manner provided in sections 19 and 20" of the Immigration Act of 1917. (Pet. Br. 8-14.) He relies on the clause in Section 19 of the 1917 Act which stated that the provisions of "this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States," arguing that this means there must have been a prior "entry" to make the alien deportable.¹

Petitioner's argument, however, is foreclosed by the decision of this Court in *Bugajewitz v. Adams*, 228 U. S. 585. There, deportation proceedings for practicing prostitution were brought against an alien under Section 2 of the Act of March 26, 1910 (36 Stat. 263, 265), which ordered deportation "in the manner

¹ Petitioner bases a like contention. (Pet. Br. 15) on the fact that Section 20, in discussing the details with respect to deportation expenses, distinguishes between proceedings instituted "within five years after the entry of the alien" and those "instituted later than five years after the entry of the alien."

provided by" Sections 20 and 21 of the Act of February 20, 1907 (34 Stat. 904). Sections 20 and 21 directed, *inter alia*, that aliens subject to removal be taken into custody within three years from entry. This Court held that there was a distinction between the words "as provided" and "in the manner provided"; that a statute employing the former phrase may be controlled by an express limitation in the incorporated statute but a statute containing the latter was not so controlled. In ruling that the three year limitation did not apply, the Court made clear that "in the manner provided" referred only to the procedure for securing deportation. *Bugajewitz v. Adams*, *supra*, at p. 591. So here, if Congress, in enacting the 1931 Act, had wished to make deportation dependent upon the conditions in Section 19 of the 1917 Act, it would have said "as provided" or "under the conditions specified" in Sections 19 and 20. Rather, it used the phrase which had already been given content by this Court as referring only to procedure, *i. e.*, "in the manner provided" by Sections 19 and 20.²

Other unsuccessful attempts have been made to restrict the application of the 1931 Act by incorporating into it various conditions found in Section 19. In *Ianni v. Harris*, 111 F. 2d 833 (C. A. 5), an alien ordered deported under the 1931 Act contended that

² As noted *infra* at pp. 22, 23-25, this reference to Sections 19 and 20 controls the "manner" in which aliens shall be taken into custody, *i. e.*, upon the warrant of the Attorney General (Section 19) and the places to which they shall be deported (Sections 19 and 20).

he was not deportable because his conviction had occurred more than five years after his entry into the United States. He relied on the limitation "within five years after entry" contained in the first clause of Section 19. The court held that the later enactment incorporated the provisions of Section 19 and 20 relating to the manner of deportation, but that the five year limitation period in Section 19 did not so relate.

Similarly, in *United States ex rel. Magri v. Wiron*, 53 F. 2d 475 (S. D. N. Y.), an alien ordered deported under the 1931 Act argued that, because of the reference in that Act to Sections 19 and 20, there could be no lawful deportation except for a cause and under conditions specified in Sections 19 and 20. The court stated on page 476:

* * * So to construe the new statute would nullify it. It is therein expressly provided that the "manner" of the deportation shall be in accord with the provisions of the older statute. Sections 19 and 20 of the 1917 Act (8 U. S. C. §§ 155, 156) prescribe what the manner of a deportation thereunder shall be. It is only to the extent of the manner thereby prescribed that the 1931 act requires that they be complied with.

It is true that these cases did not deal with the question whether the "entry" of the alien was required, but concerned the time limitation measured from entry. However, it is manifest that, if the clause relating to the time limitation is not properly to be incorporated into the statute, neither is the word

"entry". All that is incorporated from Section 19 into the 1931 Act is the "manner" of deportation.³

B: Even if the proviso of Section 19 of the 1917 Act were applicable, it would not make "entry" a condition precedent to deportation under the 1931 Act.

We have just shown the error in petitioner's argument that the proviso in Section 19—that "the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States"—made "entry" a condition precedent to deportability.⁴ But this argument is untenable even on petitioner's premise that this clause was incorporated into the 1931 Act. The only relevant limitation would still be that the conviction occur subsequent to the effective date of the Act, February 18, 1931.

³ Some courts have held that the proviso in Section 19 which provides for the inapplicability of the section to the deportation of aliens convicted of a crime involving moral turpitude when the sentencing judge recommends against deportation involves the "manner" of deportation within the meaning of the 1931 Act. Their reasoning is that sentence is an essential element of the deportation and therefore is a part of the "manner" of deportation. (Pet. Br. 12); *Dang Nam v. Bryan*, 74 F. 2d 379, 380 (C. A. 9). Before it was amended in 1940 the 1931 Act required that the alien be previously "convicted and sentenced". The words "and sentenced" were deleted by the amendment. See *Ex parte Eng*, 77 F. Supp. 74, 77 (N. D. Cal.), holding that sentence is nevertheless still part of the "manner" of deportation.

⁴ It should be noted that the phrase "irrespective of the time of their entry" does not carry the same connotation as the "after entry" provision involved in *Barber v. Gonzales*, 347 U. S. 637. While the phrase "after entry" may be read as imposing a condition to deportability, the phrase "irrespective of the time of their entry" merely negates a time limitation.

Section 19 contained 12 subject clauses, each referring to variously described aliens as "any alien who * * *", etc. All of the subject clauses had as their predicate the clause, "shall, upon the warrant of the Attorney General, be taken into custody and deported". This is the "manner" of deportation referred to in the 1931 Act.⁵ Following this predicate were several provisos, including the clause upon which petitioner relies.

Some of the subject clauses contained references to periods of time within which the described aliens could be deported: *e. g.*, "within three years after entry" for those entering without inspection; "within five years after entry" for a public charge. Others specified that the act on which deportation was to be based must have been committed "after entry": *e. g.*, the anarchy clause, and the clause relating to crimes involving moral turpitude. Others, however, contained no reference to time or to entry: *e. g.*, "any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose." With respect to a similar clause dealing with managing a house of prostitution, this Court specifically held in *Costanzo v. Tillinghast*, 287 U. S. 341, 344-345, that the time limitations of the other sections did not apply. Referring to the proviso here involved, this Court noted that there "is nothing upon which this proviso may operate if such of the pre-

⁵ Section 19 further provides that an alien arrested for a violation of any other law "shall be deported to the place specified in such other law". Section 20 of the 1917 Act, also referred to in the 1931 Act, designated the ports to which the alien was to be deported and the details relative to expense. See *infra*, pp. 24-26.

ceding clauses as contain no time limitation are qualified by the words of the first fixing the limitation at five years". The Court ruled that "each clause containing a time limitation" was to be "read separately as an exception to the general rule declared by the proviso". The proviso itself made that clear by making the provisions of the section applicable "with the exceptions hereinbefore noted". The exceptions, of course, were the prior clauses which specifically include words of time.

On this basis, even if the 1931 Act were read back into Section 19 of the 1917 Act, it would still be governed by its own time-limitation clause, and that time limit was that the conviction occur after February 18, 1931. Under *Costanzo v. Tillinghast, supra*, the proviso on which petitioner relies—with its phrase, "irrespective of the time of their entry"—would be inapplicable. "Entry" therefore cannot read into the 1931 Act as a condition precedent to deportability.

C. *The reference in the 1931 Act to the manner of deportation in Section 20 of the 1917 Act did not make "entry" a condition precedent to deportability.*

Petitioner contends, as he does with respect to Section 19, that Section 20 of the Act of 1917 made "entry" a condition precedent to deportation and that such limitation applied in this case because the 1931 Act also referred to Section 20 for the "manner" of deportation (Pet. Br. 14-16).

It should again be noted that Section 20 dealt only with the ports to which an alien could be deported and the details relative to expense. Unlike Section 19, which had time-limitation clauses, Section 20 im-

posed no limitation of any kind on deportability. Rather, its obvious purpose was to facilitate the actual mechanics of deportation. However, even if Section 20 did contain a limitation on deportability, we believe that, as was the case with respect to Section 19, petitioner's argument is also foreclosed by *Bugajewitz v. Adams*, 228 U. S. 585, in which this Court held that a statute providing for deportation "in the manner provided" in another statute cannot be controlled by an express limitation on deportability in the incorporated statute. *Supra*, pp. 19-20.

Moreover, a mere reading of the statute shows that Congress must have used the word "entry" in Section 20 in its common, everyday sense as meaning "coming in," rather than "coming into the United States from some foreign port or place," which was the construction this Court placed on the word "entry" as used in Section 19 (a) of the 1917 Act. *Barber v. Gonzales*, 347 U. S. 637. For in Section 20 of the 1917 Act (8 U. S. C. (1946 ed.) 156), in making specific provision for the place to which aliens shall be deported, it is stated that

* * * if such aliens *entered foreign contiguous territory from the United States* and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refused to permit their *reentry*, or imposes any condition upon permitting *reentry*, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior

to *entering the country* from which they entered the United States. * * * [*supra*, p. 6; emphasis added.]

Manifestly, Congress could not have intended "entry" to have meant "entry from some foreign port or place" or "entry as an alien" when it used the word in referring both to entry into the United States and entry into a foreign country. It is submitted that the holding of the *Gonzales* case, *supra*, in regard to the meaning of the word "entry" in Section 19 (a) of the 1917 Act, cannot be extended to cover the meaning of the word "entry" as used in Section 20. If it were to receive such a construction, the phrase "entered foreign contiguous territory from the United States" (emphasis added) would be meaningless. It is apparent, therefore, that, regardless of its meaning in Section 19 (a) of the 1917 Act, in Section 20 "entry" is used merely to mean a "coming in", and therefore imposed no barrier to petitioner's deportation.

D. *The legislative history reveals that Congress required only the conviction of an alien for a narcotics offense after February 18, 1931, as a requisite for deportation under that Act.*

The reports on the bill (H. R. 3394, 71st Cong., 2d Sess.) which became the Act of 1931 reveal merely a purpose to deport all aliens who thereafter engaged in narcotics traffic (H. Rep. No. 1373, 71st Cong., 2d Sess.; S. Rep. No. 1443, 71st Cong., 3d Sess.), with an exception suggested on the floor of the House for addicts who were not peddlers or dealers (72 Cong. Rec. 10324, 12367, 12453).

S. Rep. No. 1443 stated:

Deportation is a proper and effective weapon against aliens who violate our laws and relieves the United States from the cost of maintaining them in our already crowded jails.

This statement has been considered as expressing the congressional intent that the law not be restrictively interpreted. *Ow Tai Jung v. Haff*, 89 F. 2d 329, 331 (C. A. 9).

There is nothing in this history to show that Congress regarded as significant any fact other than the alienage which was necessary to support deportation, and the fact of conviction for trading in narcotics. Petitioner, as an alien convicted of trading in narcotics, falls within the plain language and clear intendment of the statute.

E. Entry as an alien is not a condition precedent to deportability in the absence of specific statutory provision.

Petitioner further contends that prior "entry" as an alien should be considered a requisite for deportation even in the absence of statutory provision because the power to exclude is essential to the power to deport (Pet. Br. 16-20). However, this challenge to the power of Congress to deport petitioner finds no support in constitutional theory or in the decided cases.⁶

The power to deport, like the power to exclude, is an attribute of sovereignty which the United States possesses in its capacity as a sovereign nation.

⁶See pp. 29, 32, 37-38 *infra* for discussion of cases relating to the power of Congress to denationalize Filipinos at the time of the establishment of Philippine independence.

Harisiades v. Shaughnessy, 342 U. S. 580, 587-588; *Carlson v. Landon*, 342 U. S. 524, 534. Whatever may be the constitutional limitations on the exercise of that power in relation to aliens in this country, it has always been recognized that an alien has no constitutional right to remain here. For this reason, aliens found presently undesirable may be deported even though the acts which give rise to deportation were not grounds for exclusion at the time of entry or grounds for deportation at the time of commission, since the *ex post facto* limitation in the federal constitution does not apply to deportation proceedings. *Marcello v. Bonds*, 349 U. S. 302, 314; *Galvan v. Press*, 347 U. S. 522, 531; *Harisiades v. Shaughnessy*, 342 U. S. 580, 595. The controlling fact is the present undesirability of the alien in the view of Congress.

Petitioner's argument is sufficiently answered by the case of *Eichenlaub v. Shaughnessy*, 338 U. S. 521, where a naturalized citizen who had been convicted of espionage, and had his citizenship revoked, was ordered deported under the Act of May 10, 1920, 41 Stat. 593, which provided for the deportation of aliens convicted of espionage after 1914. Despite the fact that he was not an alien when the offense was committed or when he was convicted, this Court held him deportable under the Act as an undesirable resident. In so holding, the Court did *not* resort to the legal fiction that, since citizenship was revoked on the grounds of fraud in the procurement, naturalization was void *ab initio*. It held simply that petitioner, as an alien at the time of the deportation proceedings, was subject to deportation.

If the United States can declare a former naturalized citizen an alien and deport him, then certainly one, never a citizen, who has become an alien is subject to deportation. In short, the constitutional power to deport depends on alienage at the time of deportation, regardless of prior status and regardless of whether there has been an "entry."

II. A Filipino citizen who has continuously resided in this country since 1930, when he entered as a non-citizen national of the United States, is validly deportable as an alien

Petitioner's contention (Pet. Br. 20-24), that Filipinos who were legal residents of the United States at the time of Philippine independence in 1946 (Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 F. R. 7517) did not lose their status as United States nationals and did not become aliens despite the clear wording of Section 14 of the Independence Act (*supra*, p. 7), has repeatedly been rejected by the court below. *Banez v. Boyd*, 236 F. 2d 934; *Resurreccion-Talavera v. Barber*, 231 F. 2d 524; *Gonzales v. Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637; *Mangaoang v. Boyd*, 205 F. 2d 553, certiorari denied, 346 U. S. 876; *Cabebe v. Acheson*, 183 F. 2d 795.¹ This Court did not reach this question in its decision in *Barber v. Gonzales*, 347 U. S. 637, and we therefore discuss under this point the intent and power of Congress to provide that, after Philippine independence, Filipino nationals should be aliens in relation to the United States.

¹The question does not appear to have arisen in other circuits. Cf. *Gancy v. United States*, 149 F. 2d 788 (C. A. 8), certiorari denied, 326 U. S. 767.

A. Both the historical relationship between the Philippine Islands and the United States and the decisions of this Court make clear that the status of citizens of the Philippine Islands as nationals of the United States has been subject to modification or termination at any time by the Congress.

1. *The historical relationship of the Philippine Islands to the United States.* Following the war with Spain, the Philippine Islands were ceded to the United States by the Treaty of Paris of December 10, 1898 (30 Stat. 1754), which provided in Article IX that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." As this Court noted in *Balzac v. Porto Rico*, 258 U. S. 298, 306, "Few questions have been the subject of such discussion and dispute in our country as the status of our territory acquired from Spain in 1899." By the Act of July 1, 1902 (32 Stat. 691, 692), Congress declared that all inhabitants of the Philippine Islands continuing to reside there who were Spanish subjects on April 11, 1899, and their children subsequently born, shall "be citizens of the Philippine Islands and as such entitled to the protection of the United States * * *". Later, in 1916, in Section 2 of the Jones Act (39 Stat. 545, 546), this provision of the 1902 Act governing the political status of the inhabitants of the Philippine Islands was repeated. The Act of April 12, 1900, 31 Stat. 77, 79, made a similar provision for the inhabitants

* Exception was made for those who elected to maintain their allegiance to Spain.

of Puerto Rico. However, in contrast with the Act of March 2, 1917, 39 Stat. 951, 953, which declared the inhabitants of Puerto Rico to be citizens of the United States, no act of Congress has ever declared the citizens or inhabitants of the Philippine Islands to be citizens of the United States."

By the series of steps summarized in *Hooven & Allison Co. v. Evatt*, 324 U. S. 632, 674-676, the subsequent political history of the Philippine Islands has consisted of a steady increase in local self-government and a progressive withdrawal of United States rule. See the Philippine Independence Act of 1934 (48 Stat. 456) which, in addition to Sections 8 and 14, *supra*, p. 7, provided for the drafting of a constitution for the Philippine Islands (Sections 1-4), a partial subjection of the products of the Philippine Islands to American tariffs (Section 6),

* The withholding of American citizenship from Filipinos is unique in our history. In every other case where new territory was ceded to the United States, provision was made for the eventual admission of the inhabitants thereof to United States citizenship. In the opinion for the Court in *Downes v. Bidwell*, 182 U. S. 244, 280, Mr. Justice Brown observed:

In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhabitants shall be incorporated into the Union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights * * *"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," etc.: * * *

and other steps toward complete independence—which was to take effect in ten years. Because of the intervention of World War II, however, the Philippine Islands did not become fully independent until 1946. Presidential Proclamations Nos. 2695 and 2696, July 4, 1946, 11 T. R. 7517.

2. *The constitutional status of the Philippine Islands and its inhabitants.* The essence of a series of decisions by this Court as to the relationship of the Philippine Islands to the United States was summarized in *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 673, 674–675, as follows:

That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima v. Bidwell*, *supra*; *Dooley v. United States*, *supra*, 182 U. S. 222; *Downes v. Bidwell*, 182 U. S. 244; *Doolzy v. United States*, 183 U. S. 151; and see also *Public Utility Commissioners v. Ynchausti & Co.*, 251 U. S. 401, 406–407; *Balzac v. Porto Rico*, [258 U. S. 298] * * *

* * * * *

The status of the Philippines as territory belonging to the United States, but not constitutionally united with it, has been maintained consistently in all the governmental relations between the Philippines and the United States. * * *

Since the Philippine Islands were at no time incorporated into the United States, persons born in the

Philippine Islands have not acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Cf. *Elk v. Wilkins*, 112 U. S. 94; Burdick, *Law of the American Constitution* (1922) pp. 327-328.

As noted above, Congress in 1902 and again in 1916 declared the inhabitants of the Philippine Islands and their children subsequently born "to be citizens of the Philippine Islands and as such entitled to the protection of the United States." *Gonzales v. Williams*, 192 U. S. 1, 12-13, held that the native inhabitants of Puerto Rico, prior to the grant of United States citizenship to them in 1917, could not be excluded from this country under a general statute relating to the exclusion of "aliens." Emphasizing that it was not passing upon the power of Congress to provide for the exclusion of such persons, this Court concluded that the statute before it "relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof," rather than to "citizens of Porto Rico, whose permanent allegiance is due to the United States. * * *" Similarly, in *Toyota v. United States*, 268 U. S. 402, 411, it was said that "The citizens of the Philippine Islands are not aliens." However, the *Toyota* decision recognizes not only that citizens of the Philippine Islands are not citizens of the United States, but also that except for a limited class they were racially ineligible for citizenship. This ineligibility for naturalization continued until 1946 (60 Stat. 416; 8 U. S. C. 703).

The chief characteristic of the status of a non-citizen national of the United States is that, regardless of his rights and privileges in relation to the United States, his position in the eyes of other nations is substantially that of a citizen of the United States. He travels on an American passport and he receives American diplomatic protection while he is abroad. Conversely, his status under international law in no way governs his position within the territory of the United States.¹⁰

¹⁰ While citizens of the various dominions in the British Commonwealth have shared a common British nationality, that nationality was relevant only in relations with countries outside of the Commonwealth. Within the Commonwealth, such persons were not regarded as primarily British, but as citizens of their respective dominions, and when in other dominions they might be subject to deportation as aliens. See, e. g. *Ex parte Banta Singh*, (1938) 1 D. L. R. 789. The insignificance of the concept of "British nationality" within the British Commonwealth has been described as follows:

* * * Within the Commonwealth a British subject is no more at liberty to roam from Dominion to Dominion than is an alien, in the strict sense of the word, at liberty to enter any part of the Commonwealth. *Nowhere indeed does the term "British subject" mean so little as it does within the British Commonwealth itself.* [Emphasis added.]

Fraser, *Control of Aliens in the British Commonwealth of Nations* (London, 1940) 28.

While Fraser notes that Great Britain, herself, has accorded equality of treatment to British subjects from all parts of the Empire, he adds that, "Her very remoteness from India freed the United Kingdom from the unpleasant necessity of herself enacting legislation aimed at Indians," (p. 31). This unmistakably implies that only considerations of legislative policy have prevented Great Britain from treating its non-citizen nationals as aliens. Thus, prior to enactment of new legislation on the subject in 1914, it was held, without dissent, that a naturalized citizen of Australia, who had taken an oath of allegiance to the king and

Thus, the inhabitants of the Philippine Islands, while admittedly not citizens of the United States, were entitled to the "protection of the United States" and owed "permanent allegiance" to the United States. This status has become known as that of a "national", as distinguished from a "citizen", or a "non-citizen national." Thus, the Harvard Law School, Research in International Law, draft convention on Nationality, contains the following comment (23 Am. J. Int. L. sp: supp., p. 23):

The term "nationality" has reference to the position of a natural person from the standpoint of international law. Every person permanently attached to a state has its nationality, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and laws of the state. Nationality does not necessarily involve the right or privilege of exercising civil or political functions. *Minor v. Happersett* (1874), 21 Wallace 162. Thus nationality has a broader meaning than "citizenship," for which it is frequently used as a synonym. * * *

* * * Its use has become common in the United States since the acquisition of the Philippine Islands and other insular possessions having inhabitants who, though they have American nationality and are entitled to full protection abroad by the Government of the United States, have not the status of "citizens

was entitled to British protection in foreign countries, was nonetheless an alien in Great Britain. *Ex parte Markwald*, [1918] 1 K. B. 617; *Markwald v. Attorney General*, [1920] 1 Ch. 348; see Wilson, *The Imperial Conference of 1937*, 32 Am. J. Int. Law 335, 337.

of the United States," within the meaning of Article 14. of the Amendments to the Constitution.

This distinction between "national" and "citizen" was written into Section 101 of the Nationality Act of 1940 (54 Stat. 1137, 8 U. S. C. 501) as follows:

(a) The term "national" means a person owing permanent allegiance to a state.

(b) The term "national of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

Congress was specifically aware that this distinction reflected the position of "the inhabitants of the various outlying possessions who owe permanent allegiance to the United States but have not the status of citizens of the United States." Hearings before the House Committee on Immigration and Naturalization on *Bills To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code*, 76th Cong., 1st Sess. (1940), p. 412. The distinction was carried forward in Section 101 (a) (21) and (22) of the Immigration and Nationality Act of 1952 in relation to inhabitants of American Samoa and Swain's Island (66 Stat. 163, 169).

There is no basis for the petitioner's suggestion (Pet. Br. 22) that the incidents and permanence of non-citizen nationality are to be equated to those of citizenship. It cannot be contended that a non-citizen national lacks only the political rights of a citizen, such as the right to vote, since such political rights

do not necessarily attach to citizenship. *Minor v. Happersett*, 21 Wall. 162. What is involved here is whether a non-citizen national has a constitutionally protected right to enter and remain in the continental United States. That a citizen of the United States has such a right to enter and reside in the United States is beyond dispute. *Colgate v. Harvey*, 296 U. S. 404, 429; *Paul v. Virginia*, 8 Wall. 168, 180; *Crandall v. Nevada*, 6 Wall. 35, 44. But a non-citizen national does not enjoy such rights. Magoon, in 1900, following the Treaty of Paris, said that, "The inhabitants of the islands acquired by the United States during the late war with Spain, not being citizens of the United States, do not possess the right of free entry into the United States. That right is appurtenant to citizenship. The rights of immigration into the United States by the inhabitants of said islands are no more than those of aliens of the same race coming from foreign lands." *Magoon's Reports* (1902) p. 120. The implication that Congress is free under the Constitution to define the status of the inhabitants of territory acquired by the United States was confirmed by this Court in *Downes v. Bidwell*, 182 U. S. 244, 279-280, in the opinion of Mr. Justice Brown:

We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their *status* shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the

doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status*, the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States.¹¹

No principle of international law is inconsistent with this conclusion. 2 Hyde, *International Law* (rev. ed., 1945), at 1092.

As noted *supra* at p. 33, there is nothing to the contrary in the holding in *Gonzales v. Williams*, *supra*. Moreover, in *Balzac v. Porto Rico*, 258 U. S. 298, 308, in discussing the effect of the grant of United States citizenship to Puerto Ricans in 1917, this Court stated:

* * * What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines

¹¹ On the proposition that it was not necessary to confer citizenship on the inhabitants of newly acquired territory, there was agreement among the several justices writing opinions. See opinion of Mr. Justice White, joined in by Justices Shiras and McKenna (182 U. S. at 306); and opinion of Mr. Chief Justice Fuller, joined in by Justices Harlan, Brewer, and Peckham (182 U. S. at 369).

must be naturalized before he can settle and vote in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the Porto Rican under the Organic Act of 1917.

The clear implication of the quoted language is that non-citizen nationals have no constitutionally protected rights to enter or reside in the continental United States. Thus, even if petitioner were correct in his contention (Pet. Br. 21) that his status as a non-citizen national cannot be terminated except by his consent or voluntary act, it would not follow that he must be permitted to remain in the United States.

Moreover, it is clear that his entire status as a non-citizen national was subject to modification or termination by Congress. If petitioner cannot lose the status of a non-citizen national except by a voluntary act of renunciation or expatriation, although he has since become a citizen of the Republic of the Philippines, an independent foreign state, he would enjoy dual nationality. But a major purpose of our nationality laws is to eliminate just such problems of dual nationality. See, *e. g.*, *Kawakita v. United States*, 343 U. S. 717; *Mackenzie v. Hare*, 239 U. S. 299; *Savorgnan v. United States*, 338 U. S. 491. It was to avoid such consequences that this Court, in *Downes v. Bidwell*, *supra*, pp. 37-38, recognized a plenary power in Congress to prescribe the status of the inhabitants of territory not incorporated into the United States.

Nor is petitioner's position aided by virtue of the fact that in the Nationality Act of 1940 and in Section 101 (a) (22) of the succeeding Immigration and Nationality Act of 1952, Congress defined "national

of the United States" as including "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." (Pet. Br. 21-22). "Permanent allegiance" does not mean an unbreakable bond, but merely distinguishes the unqualified allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States v. Wong Kim Ark*, 169 U. S. 649, 657; *Carlisle v. United States*, 16 Wall. 147, 154.

There is no doubt that Congress so used the phrase "permanent allegiance" in Section 101 (b) (8 U. S. C. 501 (b)) of the 1940 Nationality Act, for that provision originated in the nationality code proposed by the State, Labor and Justice Departments and was characterized as follows in the explanatory report submitted to the Congress (Hearings, *ibid.*, p. 412):

The nationals of a state owe permanent allegiance to the state or the personal sovereign thereof, as distinguished from the obligation of aliens temporarily residing or sojourning in the territory of the state, sometimes called "temporary allegiance," to obey the laws (*Carlisle v. United States*, 16 Wall. 147). The word "permanent" in this connection means continuous, or of a lasting nature, as distinguished from "temporary," but it does not connote an indissoluble relationship. Thus, the "permanent allegiance" owed to the United States by Philippine citizens may continue un-

til terminated at the end of the 10-year period prescribed in the act of Congress of March 24, 1934. It was permanent allegiance which was referred to by Justice Iredell, in Talbot v. Jansen, 1795, 3 Dall. 133, 164, when he said:

*“By allegiance I mean the tie by which a citizen of the United States is bound as a member of the society.”*¹³ [Emphasis added.]

And, while persons in petitioner's position were liable for American military service during World War II, the same result would have followed if the Philippine Islands were then independent, for such persons would then have been allied aliens. With the independence of the Philippine Islands, petitioner, as a citizen of the Philippines, owes “permanent” allegiance to the Republic of the Philippines, rather than to the United States; he must look to the Republic of the Philippines, rather than to the United States, for passports and diplomatic protection abroad (*Cabebe v. Acheson*, 183 F. 2d 795 (C. A. 9)); and his liability for military service in this country is no different from that of other aliens. 50 U. S. C. App. 454 (a).

B. In any event, Congress could modify the status of citizens of the Philippine Islands as nationals of the United States as an incident to providing national independence for the Philippines.

However, it is not necessary to decide here what petitioner's rights as a non-citizen national would be if the Philippine Islands remained under the control

¹³ For use of this report in interpreting the 1940 Act, see *Savorgnan v. United States*, 338 U. S. 491, 505.

of the United States for an indefinite future. It should be decisive in this case that petitioner was subjected to deportation and other incidents of the immigration laws by Sections 8 (a) and 14 of the Philippine Independence Act, as part of a major, decisive step toward complete national independence for the Philippine Islands. It will hardly be contended that the United States was without power to provide for Philippine independence. *Hooven & Allison Co. v. Evatt, supra*. That case upheld the validity of significant changes in the previously existing trade relationships between the Philippines and this country; changes which were an important part of the transition of the Philippine Islands toward independence.

The precise nature of the transition which began with the 1934 Act was described by this Court in *Hooven & Allison Co. v. Evatt, supra*, at 675-678, as follows:

The Act of 1934 made special provisions for the relations between the two governments pending the final withdrawal of sovereignty of the United States from the Philippines and in particular provided for a limit on the number and amount of articles produced or manufactured in the Philippine Islands that might be "exported" to the United States free of duty. § 6. It provided for the complete withdrawal and surrender of all right of possession, supervision, jurisdiction, control or sovereignty of the United States over the Philippines on the 4th of July following the expiration of ten years from the date of the inauguration of the new government, organized under the Constitu-

tion provided for by the Independence Act. § 10 (a). The new Philippine Constitution was adopted on February 8, 1935, and the new government under it was inaugurated on November 14, 1935. * * * *Thus, by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.*

* * * *

*The Independence Act, while it did not render the Philippines foreign territory, * * * treats the Philippines as a foreign country for certain purposes. * * * [I]t established immigration quotas for Filipinos coming to the United States, as if the Philippines were a separate country, and in that connection extended to Filipinos the immigration laws relating to the exclusion or expulsion of aliens. It also provided * * * that citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For purposes of 8 U. S. C. §§ 154 and 156, relating to deportation, the Philippine Islands are declared to be a foreign country.*

** * * Foreign service officers of the United States may be assigned to the Philippines, and are to be considered as stationed in a foreign country. * * * And the Independence Act, § 6 48 Stat. 456, 460, provides that "when used in this section in a geographical sense, the term 'United States' includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and island of Guam." As we have*

said, the Philippines have frequently dealt with other countries as a sovereignty distinct from the United States. [Emphasis added.]

See also, *Cincinnati Soap Co. v. United States*, 301 U. S. 308, 319-320, 322-324.

Incident to that same intricate adjustment, Congress clearly had the power, as this Court recognized in the portion of the *Hooven & Allison* opinion quoted above, to change the status as non-citizen nationals of the United States of citizens of the Philippine Islands residing both there and in this country. This power was as broad as the power of Congress to determine initially, following the Treaty of Paris, the status of the inhabitants of the Philippines. The exercise of that power in Sections 8 (a) and 14 of the 1934 Act reflected both the greater autonomy conferred immediately upon the Philippine Islands and the certainty that within a few years the Philippines would be a completely independent state exacting primary and "permanent" allegiance from its own citizens. Under these circumstances, Congress clearly had the power to take steps to eliminate the problems of dual nationality which would arise if citizens of the Philippine Islands became citizens of their own independent national state while retaining their old status as non-citizen nationals of the United States.

Moreover, these arrangements, with respect to a territory and a people preparing for complete independence were not only an exercise of the power of Congress under Article 4, Section 3 of the Constitution to "dispose of * * * territory * * * belong-

ing to the United States," but constituted the basis for our relations with the future Republic of the Philippines. These matters, if not political questions, obviously required that Congress be able to exercise in 1934 the same broad and flexible powers that it admittedly had in initially determining the status of the Philippine Islands and their inhabitants. Indeed, the decisions of this Court which recognized that Congress must be able to utilize a variety of solutions in defining the status of Indians and Indian tribes, *United States v. Nice*, 241 U. S. 591, 598, support, *a fortiori*, an equally plenary power in defining the relationship to the United States of persons who are about to become citizens of an independent foreign state. See also *Harisiades v. Shaughnessy*, 342 U. S. 580, 588-591.

It should be emphasized that there is here involved no question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless.¹⁴ Petitioner and every other person who became by birth a citizen of the Philippine Islands became citizens of the Republic of the Philippines under Art. IV, Sec. 1, Constitution of the Philippines, 30 Phil. Pub. Laws 373, regardless of whether such persons had remained in the Philippines or came to the United States.

Similarly, there is not involved here any constitutionally protected right of petitioner to elect to retain his status as a non-citizen national of the United

¹⁴ Even if such an effect were to result, we submit that it would not preclude congressional power (see the Government's briefs in *Perez v. Brownell* and *Trop v. Dulles*, Nos. 572 and 710, this Term), but, in any event, the question is not present in this case.

States. American courts, in situations not controlled by a statute or treaty of the United States, have sometimes recognized and applied an international practice of allowing citizens of ceded or conquered territory, who are residing elsewhere, to elect whether to assume the nationality of the new sovereign of such territory. See, for example, *United States ex rel. Schwarzkopf v. Uhl*, 137 F. 2d 898 (C. A. 2). The applicability of any such practice to the peaceful separation of the Philippines from this country is highly doubtful. Petitioner clearly could not compel the United States to accept him as a citizen, so that any election would be between Philippine citizenship and a continuation of his nebulous status as a non-citizen national of the United States. When, on July 4, 1946, the Republic of the Philippines became an independent state, petitioner became a citizen of a foreign country to which he owes the permanent allegiance which was previously due to the United States, and to which he must look for diplomatic protection. At this point, without more, his status as a non-citizen national, which had theretofore distinguished him from aliens generally, terminated. In any event, when Congress by the Act of July 2, 1946 (60 Stat. 416) made "Filipino persons" eligible for naturalization as American citizens, it in effect provided, simultaneously with petitioner's loss of his status as a non-citizen national, that persons in his position (who do not by their own acts render themselves ineligible) could elect between remaining citizens of the Republic of the Philippines or becoming citizens of the United States. *Application of Vitoria*,

84 F. Supp. 584 (D. Hawaii); and see Note, 50 Col. L. R. 371 (1950):

C. In Sections 8 (a) and 14 of the Philippine Independence Act of 1934, Congress has made citizens of the Philippine Islands, regardless of when they came to this country, subject to deportation for acts committed after May 1, 1934.

We have shown that by 1934 there was no doubt as to the power of Congress to modify the status of citizens of the Philippine Islands as non-citizen nationals of the United States, particularly as an incident to the transition of the Philippine Islands to complete national independence. Thus, there is no justification for reading Sections 8 (a) and 14 of the Philippine Independence Act otherwise than according to their plain meaning, or so as to produce absurd results, in order to avoid possible constitutional questions.

As we have seen, petitioner was ordered deported from the United States pursuant to the Act of February 18, 1931, on the ground that he has been convicted of a narcotics violation. The conviction in question occurred in 1951. See p. 8, *supra*. If petitioner's status was that of an alien at the time of conviction, the deportation provision applied.

1. Since the period from 1934 to 1946 has no direct relevancy to the problems of this case, the immediate effect of Section 8 (a) of the Philippine Independence Act—which declared that even from the time the Act became effective in 1934, and before full independence, citizens of the Islands who were not citizens of the United States should be treated as

aliens for the purposes of the immigration laws—need not be decided here. However, Section 8 (a) gives added weight to the legislative intent behind Section 14 of the Act. Even without Section 14, which became effective in 1946, if such national was deportable as an alien from 1934 to 1946 under Section 8 (a), he obviously did not cease to be such when the Republic of the Philippines became an independent nation in 1946. If, as we contend, Section 8 (a), which became effective May 1, 1934, made petitioner an alien from that date on for deportation purposes, it follows *a fortiori* that such was his status in 1951, subsequent to full independence.

Section 8 (a) (1), which with Sections 6, 7 and 9 appears under the heading "Relations With The United States Pending Complete Independence" (48 Stat. 459-463), provides in pertinent part that

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *

It is clearly provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." There is not the slightest suggestion in the quoted language that it is not to apply to such persons who are residing in the United States. See *Gonzales v. Barber*, 207 F. 2d 398, affirmed on other grounds, 347 U. S. 637, where the court below wrote, at p. 401:

The Immigration Act of 1917 was one of the statutes specifically envisioned by Congress in providing that for its purposes Filipinos "shall be considered as if they were aliens." Since both convictions occurred after the effective date of the Philippine Independence Act of 1934, Gonzales is properly subject to deportation * * * if he is otherwise subject to its terms.

See also *Mangaoang v. Boyd*, 205 F. 2d 553, 556 (C. A. 9), certiorari denied, 346 U. S. 876. The contemporaneous and repeated administrative construction of Section 8 (a) (1) applied it to citizens of the Philippines residing in the United States.¹⁴

2. Any doubts as to the effect of the Philippine In-

¹⁴ See Pet. Br. 24 and Pet. Reply Brief pp. 24-28, *Barber v. Gonzales*, No. 431, O. T. 1953. Since one of the two convictions which formed the basis for the deportation order in *Gonzales* occurred in 1941, subsequent to passage of the Philippine Independence Act but prior to the effective date of Section 14, the effect of Section 8 (a) on respondent's status was more fully discussed in the Government's briefs in that case.

dependence Act on Filipinos residing in the United States is, however, resolved by reference to Section 14 of the Act which, as noted *supra* at p. 29 became effective in 1946 and is controlling here. This section provided:

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

Applying without qualification to "persons who were born in the Philippine Islands," Section 14 required that petitioner continue to be treated as an alien for deportation purposes after the Philippines became independent on July 4, 1946. On that date, the entire rationale of *Gonzales v. Williams*, 192 U. S. 1, *supra*, p. 33, disappeared and, without more, petitioner ceased to be a national of the United States and became an alien in relation to the United States for all purposes.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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No. 403

Supreme Court of the United States

HENRY RAGONTON RABANG, *Petitioner.*

vs.

JOHN P. BOYD, District Director, Immigration and
Naturalization Service, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH DISTRICT

PETITION FOR REHEARING

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No. 403

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH DISTRICT

PETITION FOR REHEARING

Petitioner prays that this court grant rehearing of its judgment and decision of May 27, 1957, affirming the judgment of the Court of Appeals for the Ninth Circuit in the above-entitled case.

REASONS FOR GRANTING REHEARING

The decision of the court in this case affirms an order for deportation to the Philippine Islands on a Filipino who came to this country as a United States national, and who has lived here continuously for the last twenty-seven years—the greater part of his life. The court has decided that despite his coming here as a national he “entered the continental United States for permanent residence” (Opinion, page 2). Because, as the court holds, petitioner became an alien on July 4, 1946, the date of Philippine Independence, he is held to have become deportable under a statute enacted on February 18, 1931, while he was still a non-deportable national.

It is petitioner's firm conviction that, notwithstanding, Congress did not intend, and could not have intended the act of February 18, 1931, to apply to persons of his class, namely, those who were nationals in 1931 and who remained such for fifteen years thereafter, regardless of their present status.

As in *Barber v. Gonzales*, 347 U. S. 637, the issue before the court was the intent of Congress. The court in *Barber* considered the intent of Congress as expressed in Section 19 of the act of February 5, 1917,¹ and held that because of the term "after entry" in section 19 there was no "Congressional intent" to make the statute applicable to Filipinos who had never *entered* the United States. In this case the court has decided that because the term "entry" was not explicitly used in the statute here involved, Congress in 1931 did not intend to limit the applicability of that statute to aliens who had *entered* the United States.

As was pointed out in the dissenting opinion of Mr. Justice Douglas, "without that condition [entry] the [1931] Act would have had no application whatsoever at the time of its passage for at that time every 'alien' was a national of another country who had 'entered' here."

A comparison of the 1922 amendment to the Jones-Miller Act with the provisions of the 1931 act indicates the probable reason for omission of the term "entry" from the latter act. The act of May 26, 1922, provides:

"Any alien who at any time after his entry is convicted under subdivision (c) shall upon the

¹ 39 Stat. 889-891.

termination of the imprisonment imposed by the court upon such conviction and upon warrant issued by the Secretary of Labor, be taken into custody and deported in accordance with the provisions of sections 19 and 20 of the act of February 5, 1917”

The use of the term “at any time after his entry” in this act expresses the intent of Congress that it should be applicable only to offenses committed subsequent to the date of entry. The condition of the statute commences to operate at a particular point of time. That point of time is the date of the alien’s “entry.” In other words, the statute does not have the effect of making an alien deportable for a narcotics conviction prior to entry—though such a conviction might operate to render the alien excludable under other provisions of law.

The purpose of the 1931 act was to broaden “the statute to include every type of infraction of laws for the regulation of narcotics,” *Dang Nam v. Bryan* (C. A. 9, 1934) 74 F. 2d 379.

The 1931 statute in explicit language adopts as the time of its operative effect the date of “the enactment of the Act.” It states:

“ . . . any alien . . . who, *after the enactment of this Act*, shall be convicted and sentenced for violation or conspiracy to violate any statute of the United States taxing, prohibiting, or regulating the manufacture, production, compounding, transportation, sale, exchange, dispensing, giving away, importation of opium, coca leaves, heroin, or any salt, derivative, or preparation of opium or coca leaves shall be taken into custody and deported in

manner provided in sections 19 and 20 of the act of February 5, 1917”

Omitting discussion of other changes at this time, it is evident that the term “after the enactment of this act” was substituted for the term “after his entry.”

Insertion of the additional words “after entry” would have been both clumsy and meaningless for then the act would have read: “ . . . any alien . . . who *after entry, and after the enactment of this act,*” etc. Since, as has already been noted, the act was at the time applicable only to aliens who “had entered,” i.e., *all aliens at that time*, the omission of the word “entry” in the 1931 statute can not signify any intent on the part of Congress to make the act prospectively applicable to resident Filipino nationals upon the future achievement of Philippine independence.

Nor is the substitution of the words in the 1931 act “shall be taken into custody and deported in manner provided in sections 19 and 20” for the words in the 1922 act “shall . . . be taken into custody and deported *in accordance with the provisions of sections 19 and 20 . . .*” of significance. There is nothing in the Congressional history of the act, or in the words used, to indicate that these two phrases are intended to have a different meaning. No such differentiation was drawn in any of the contemporary lower court opinions construing the two acts. *Hampton v. Wong Ging* (C. A. 9, 1924) 299 Fed. 289; *Weedin v. Moy Fat* (C. A. 9, 1925) 8 F. 2d 488; *United States v. Wing* (D. C., Nev., 1925) 6 F. 2d 896; *Dang Nam v. Bryan* (C. A. 9, 1934) 74 F. 2d 379, Cf. *United States ex rel. Grimaldi v. Ebey* (C. A. 7, 1926) 12 F. 2d 922; *Chung Que Fong v. Nagle*

(C. A. 9, 1926) 15 F. 2d 789; *United States ex rel. Spataro v. Day* (C. A. 2, 1928) 23 F. 2d 1005; *Todaro v. Munster* (C. A. 10, 1933) 62 F. 2d 963; *Shibata v. Tillinghast* (D. C., Mass., 1929) 31 F. 2d 801.

The 1931 act did not repeal the 1922 amendment to the Jones-Miller Act. The two acts remain as parallel statutes until the passage of the Immigration and Nationality Act of 1952.²

The construction of the statute involved in *Bugajewitz v. Adams*, 228 U. S. 585, involved an entirely different situation. The act of February 20, 1907,³ provided that:

"Sec. 3. . . . any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this Act."

This act was amended by the act of March 26, 1910.⁴ The amendment, indicating deletions by bracketing the words deleted, and additions by italicizing, reads as follows:

" . . . any alien [woman or girl] who shall be found an inmate of *or connected with the management* of a house of prostitution or practicing prostitution [within three years] after [she] *such alien* shall have entered the United States . . . shall be deemed to be unlawfully within the United States and shall be deported [as] *in the manner*

² Sec. 403 (a) (10), (31); 66 Stat. 166.

³ 34 Stat. 898, 899.

⁴ 36 Stat. 263, 265.

provided by sections twenty and twenty-one of this Act."

Thus after the amendment the statute read:

"Sec. 3. . . . any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States . . . shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this Act."

Section 20 of the act of 1907⁵ which was unchanged by the 1910 amendment read as follows:

" . . . any alien who shall enter the United States in violation of law . . . shall, upon warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States . . . "

It is apparent from the foregoing that the 1910 amendment of section 3 of the 1907 Act had as its specific objective the elimination of the three-year statute of limitation upon deportation of persons found to be practicing prostitution. The court considered whether the general language of reference to sections 20 and 21 could be construed as reincorporating into section 3 the very three-year statute of limitations which Congress had specifically stricken from the section. The court, construing the amendment, stated:

"We are of the opinion that the striking out of the three-year clause from section 3 is not changed by reference to sections 20 and 21. The *change in*

⁵ 34 Stat. 898, 904, 905.

phraseology of the reference indicates a narrowed purpose. The prostitute is to be deported not 'as provided' but 'in the manner provided' in sections 20 and 21. Those sections provide the means for securing deportation and it was still proper to point to them for that." [emphasis added.]

In the 1931 Act the Congress made no change in phraseology which would have indicated an intent to make the new statute applicable to persons who, though they had never entered as aliens, might in the future, by operation of law, become aliens. On the contrary, there is nothing in the legislative history of the act to indicate such an intent on the part of Congress.

The decision of this court affirms a judgment which approves the uprooting and expulsion of a man who came here as a United States national, and who has spent the major portion of his life in the United States. He has acquired ties of family, friends, community and culture which are far stronger today, when he is held to be an alien, than they were when he came here twenty-seven years ago as a United States national. The very circumstance of his long-held nationality, and continuing though (it is now held) mistaken belief that he was still a national at the time of his plea and sentencing for a narcotics offense was probably the cause of the deportation proceedings. For, had he known that he was an alien, subject to deportation, he would have availed himself of the opportunity to request a judicial recommendation against deportation under the provisions of section 19 of the 1917 Act. *Dang Nam v. Bryan*, 74 F. 2d 379. In view of the fact that the court regarded his offense as of such a minor

character as to suspend sentence, it is reasonably certain, that such a request would have been granted. Under these circumstances, petitioner submits that the court should reconsider this case, and resolve doubts concerning construction of the 1931 statute, which, in line with *Barber v. Gonzales*, 347 U. S. 637, would exempt former nationals from the penalty of deportation. *Fong Haw Tan v. Phelan*, 333 U. S. 6, 10.

CONCLUSION

For the foregoing reasons the petition for rehearing should be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

JOHN CAUGHLAN